

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-54871 EDW
Case No. 3340202

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's boyfriend, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Care Management Director, represented the Department of Community Health's Waiver Agency, the ██████████ Area Agency on Aging ("Waiver Agency" or "AAA"). ██████████, Care Manager, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's services through the MI Choice waiver program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old woman who has been enrolled in and receiving MI Choice waiver services through AAA since early ██████. (Exhibit 1, pages 9-10; Testimony of ██████).
2. AAA is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
3. Specifically, Appellant has received personal care services, homemaker services, a Personal Emergency Response System Unit, and toilet rails. (Exhibit 1, pages 9-10; Testimony of ██████).

4. On ██████████, Appellant was approved for Home Help Services (HHS) through the Michigan Department of Human Services (DHS). The effective start date for the HHS was identified as ██████████. (Exhibit 1, pages 64-65).
5. Based on that approval for HHS, AAA decided to terminate Appellant's services through the MI Choice waiver program. (Testimony of ██████████; Testimony of ██████████).
6. On ██████████, AAA sent Appellant a notice that it was terminating her services because she qualified for HHS and would be receiving such services as of ██████████. The notice identified the effective date of termination as ██████████. (Exhibit 1, pages 6-7).¹
7. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 1, page 8). Appellant's services were not terminated because of the pending hearing. (Testimony of ██████████).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case AAA, function as the Department's administrative agency.

Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440, and subpart G of part 441 of this chapter.

(42 C.F.R. § 430.25(b))

¹ The Waiver Agency also briefly suspended Appellant's services earlier when she was in the hospital. (Exhibit 1, pages 4-5).

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as “medical assistance” under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan.

(42 C.F.R. § 430.25(c)(2))

In this case, as a preliminary matter, this Administrative Law Judge would note that some of the services Appellant received through the MI Choice waiver program were one-time assistance and are not ongoing. For example, now that the emergency response unit and toilet rails have been installed, they will not have to be installed again.

With respect to Appellant’s ongoing services, the Minimum Operating Standards for MI Choice Waiver Program Services provide:

E. USE OF OTHER PAID SERVICES

Before authorizing MI Choice services for a participant, the waiver agent must take full advantage of LTC services in the community that are available to the participant and paid for by other fund sources, including third party reimbursements. MI Choice funding is the payment source of last resort . . .

(Exhibit 1, page 20)

The Attachment to Medical Services Administration Policy Bulletin 11-27 (July 1, 2011) (hereinafter “MSA 11-27”) became effective August 1, 2011 and it also references the Minimum Operating Standards. (Exhibit 1, page 40). Similarly, the memorandum provided by the Waiver Agency also specifically discusses the need to seek all other forms of payments, including HHS, prior to authorizing MI Choice services. (Exhibit 1, pages 21-24)

Here, it is undisputed that Appellant was approved for the Home Help Services (HHS) program administered by the Department of Human Services (DHS) and the Waiver Agency attempted to set up a seamless transition between the end of the waiver services and the start of the HHS. After Appellant appealed the termination of waiver services, the waiver services were reinstated, pending the disposition of this appeal, and her HHS were cancelled.

Nevertheless, given the availability of HHS, the Waiver Agency's decision should be sustained. The MI Choice program is the payer of last resort and Appellant has other fund sources for services. To the extent that Appellant challenges the amount of HHS authorized, she must raise that issue in a new appeal and the proper forum.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly terminated Appellant's services through the MI Choice waiver program.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

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Date Mailed: 11/23/2011

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.