

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2012-32596 EDW

██████████
Appellant
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's niece, appeared on behalf of Appellant.

██████████ Special Projects Manager, represented the Department's waiver agency, the Area Agency on Aging ██████████ (Waiver Agency or AAA). ██████████, MI Choice Manager and ██████████, R.N., Care Manager, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Department's MI Choice Waiver agent properly administratively close Appellant's case due to a violation of MI Choice Participant Responsibilities?

FINDINGS OF FACT

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

1. The Department contracts with AAA ██████████ to provide MI Choice Waiver services to eligible beneficiaries.
2. AAA ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a ██████████ year-old woman who is hearing impaired and legally blind. (Exhibit 2). Appellant has been receiving the following MI Choice Waiver services: Care Management Services; Personal Care: Medication Management; Homemaking Services, Meals; and Personal Emergency

Response System. (Exhibit 1, p 24).

4. The Appellant's niece provides some informal care for the Appellant.
5. On ██████████, ██████████, R.N., was visiting Appellant to assist Appellant with paperwork for public housing assistance. ██████████ talked to Appellant about putting her dog away when workers were present as the dog acted aggressive in ██████████ presence. ██████████ also informed the vendor providing services to Appellant, Helping Hands, of the situation with Appellant's dog. (Exhibit 1, p 2).
6. On ██████████, ██████████ from Helping Hands contacted ██████████ to inform her that Appellant's dog was aggressive and had bitten her on ██████████. ██████████ informed ██████████ that she had to get medical care and was given an injection. (Exhibit 1, p 3).
7. On ██████████, ██████████ spoke to Appellant on the telephone and informed her that she would have to have the dog crated or locked in a bedroom when workers came to visit. (Exhibit 1, p 3).
8. On ██████████ ██████████ and ██████████, MI Choice Manager, made a home visit to Appellant's residence and informed her that if she did not crate or lock up her dog when workers were in the home services could not be rendered and Appellant might be terminated from the MI Choice Waiver program. (Exhibit 1, p 4).
9. On ██████████, another incident occurred where Appellant's dog bit a Helping Hands worker, ██████████. ██████████ completed a Confidential Incident Report on ██████████ (Exhibit 1, p 23).
10. On ██████████, the Waiver Agency sent Appellant an Advance Action Notice informing Appellant that her case was being administratively closed due to violation of MI Choice Participant Responsibilities. (Exhibit 1, pp 24-25).
11. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the Appellant. (Exhibit 2).

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 (CFR). 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.

This Appellant has been receiving services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called

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MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case The AAA 1-B, 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 CFR 430.25(b)*

[REDACTED], MI Choice Manager, testified that she and [REDACTED], R.N., Care Manager, visited Appellant following the [REDACTED] dog bite incident and informed Appellant that the dog had to be in a locked room or in a crate when workers came. [REDACTED] testified that she also told Appellant that if her dog bit another worker she could be discharged from the program. During this visit, [REDACTED] recognized that it would be difficult for Appellant to get the dog into a crate, so it was agreed that Appellant would simply lock the dog in a bedroom when workers arrived.

[REDACTED], Appellant's niece, testified that Appellant did not blatantly disregard instructions to keep the dog crated or in a locked bedroom, but that the Appellant had difficulty getting the dog into the crate and that oftentimes workers would notice her struggling and say, "Oh, that's okay, you don't have to crate the dog." Appellant felt that since the workers said it was okay, she did not have to lock the dog up each time. [REDACTED] indicated that since this last incident, Appellant has been locking the dog in a bedroom when workers arrive to provide services.

The Waiver Agency provides to all participants in the program a copy of the Community Support Services Participant Handbook. Page 5 of the handbook is titled, "Your Responsibilities" and indicates, among other things that participants are required to:

Provide a safe and non-threatening environment for those arranging for and providing services. For example:

- Keep animals/pets outside or away from service providers and/or care managers.

* * * *

Here, it is clear that Appellant failed to provide a safe and non-threatening environment for those arranging for and providing services by failing to safeguard workers from her

dog. However, the Waiver Agency's closure of Appellant's case due to this situation seems a bit excessive. The Waiver Agency should have simply informed the vendor, Helping Hands, to not enter Appellant's home until or unless Appellant's dog was crated or locked in a bedroom. Given that the vendor had been informed of the situation with Appellant's dog, they must take some responsibility for this situation, especially given that it appears that the vendor's employees told Appellant that it was okay to let her dog be free in the apartment during visits.

Finally, it must be noted that there is no provision in the Waiver Agency's own Community Support Services Participant Handbook that allows for the termination of a person's services under these circumstances, nor is there any provision in the Medicaid Provider Manual that allows for termination in this case.

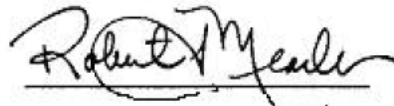
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency improperly administratively closed Appellant's case due to a violation of MI Choice Participant Responsibilities.

The Waiver Agency must instruct its vendor to not enter Appellant's home until or unless Appellant's dog is crated or locked in a bedroom.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.



Robert J. Meade
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 3-27-12

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***** 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.