

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
**FOR THE DEPARTMENT OF COMMUNITY HEALTH**  
P.O. Box 30763, Lansing, MI 48909  
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 2012-41773 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 son, appeared and testified on Appellant's behalf. ██████████ Regional Supervisor, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the Area Agency on ██████████ ("Waiver Agency" or "AAA"). ██████████ ██████████ Appellant's case manager, also appeared as a witness for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly deny Appellant's services through the MI Choice waiver program in the month of ██████████?

**FINDINGS OF FACT**

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

1. AAA is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for the provision of MI Choice waiver services.
2. Appellant was enrolled in and had been receiving MI Choice waiver services through AAA. ██████████; Exhibit 1, pages 4-23).
3. On ██████████ a staff member from the Michigan Department of Human Services (DHS) notified AAA staff that Appellant was financially ineligible for the waiver program as of ██████████. (██████████ ██████████; Exhibit 1, page 10).
4. ██████████ telephoned Appellant's son that same day. She informed him

of DHS's determination regarding financial eligibility and the end of Appellant's waiver services. ( [REDACTED] ; Exhibit 1, page 10).

5. AAA also sent Appellant and her son written notification of the termination of services. ( [REDACTED] ; Exhibit 1, page 10).
6. On [REDACTED] the Michigan Administrative Hearings System (MAHS) received a request for hearing filed by Appellant's son on Appellant's behalf. In that request, Appellant disputes DHS' determinations regarding Medicaid eligibility and eligibility for the waiver program. (Exhibit 2, pages 1-5).
7. After Appellant's appeal was filed, her Medicaid and waiver services were reestablished as of [REDACTED]. However, Appellant never received payment for waiver services performed in [REDACTED]. ( [REDACTED] ).

### **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.

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 CFR 430.25(b))

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 CFR 430.25(c)(2))

However, while regional agencies such as AAA function as the Department’s administrative agency, determinations regarding financial eligibility for the MI Choice Waiver Program are made by DHS:

## **2.1 FINANCIAL ELIGIBILITY**

Medicaid reimbursement for MI Choice services requires a determination of Medicaid financial eligibility for the applicant by the Michigan Department of Human Services (MDHS). As a provision of the waiver, MI Choice applicants benefit from an enhanced financial eligibility standard compared to basic Medicaid eligibility. Specifically, MI Choice is furnished to participants in the special home and community-based group under 42 CFR §435.217 with a special income level equal to 300% of the SSI Federal Benefit Rate. Medicaid eligibility rules stipulate that participants are not allowed to spend down to achieve an enhanced financial eligibility standard.

(Medicaid Provider Manual, MI Choice Waiver Chapter  
January 1, 2012, page 2)

Given that policy, AAA must rely on the determination of financial eligibility made by DHS and, in this case, it properly ended services after DHS made the determination that Appellant was financially ineligible. Similarly, it properly reinstated services after DHS determined that Appellant was once again financially eligible.

Appellant’s primary issue in this case is not properly before this court. Appellant’s representative stated that he wished to dispute the determination of financial ineligibility. It was explained that the Department of Human Services (DHS) office has jurisdiction over eligibility issues, not the Department of Community Health (DCH) or the Waiver Agency. Appellant has been advised to file a hearing request in the appropriate forum so that a separate hearing can be scheduled to address the eligibility determination with DHS. Moreover, because Appellant’s request for hearing also included the issues of financial eligibility, Appellant’s 90-day time period for requesting a hearing with DHS should be extended, but not longer than 90 days from the date of this hearing.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED** that:

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

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

cc:

[REDACTED]

Date Mailed: 5-16-12

**\*\*\* 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.