# 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:

	<b>Docket No.</b> 2012-42451 EDW
Appe	llant
DECISION AND ORDER	
	is before the undersigned Administrative Law Judge pursuant to MCL 400.9 431.200 et seq. upon the Appellant's request for a hearing.
	on behalf of the Appellant.  Attorney  Appellant was not present for
appeared and testified on behalf of the Department's Waiver Agency. appeared as a witness for the appeared but did not testify.	
ISSUE	
Did the Department's Waiver Agency properly terminate Appellant's MI Choice Waiver services?	
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 Appellant was enrolled in the He had been receiving supports coordination, personal care, and homemaker services. (Exhibits 1 & 2 and testimony).
2.	The Department contracts with the services to eligible beneficiaries.
3.	The Appellant is a property of the property of the Appellant is a property of the Appellant i

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polar disorder, with manic/depressive episodes. (Exhibit 2 and testimony).

- 4. The Appellant lives with his wife in their own home. (Exhibit 2 and testimony).
- 5. On learned that Appellant's in-home caregiver refused to continue services in Appellant's home due to Appellant becoming verbally aggressive with her; letting his aggressive dog out and causing her to feel threatened by the dog; and, because Appellant was not properly taking his prescribed medications, often taking morning, noon and night medications at the same time. The caregiver indicated that due to Appellant's behavior she could no longer care for the Appellant. (Exhibits 2 & 4 and testimony).
- 6. On y sent an Adequate Action Notices to the Appellant notifying him of a termination of of personal care and homemaking, at the Appellant's request due to him being unhappy with the services. (Exhibits 1-3 and testimony).
- 7. On Administrative Hearing. (Exhibit 6).

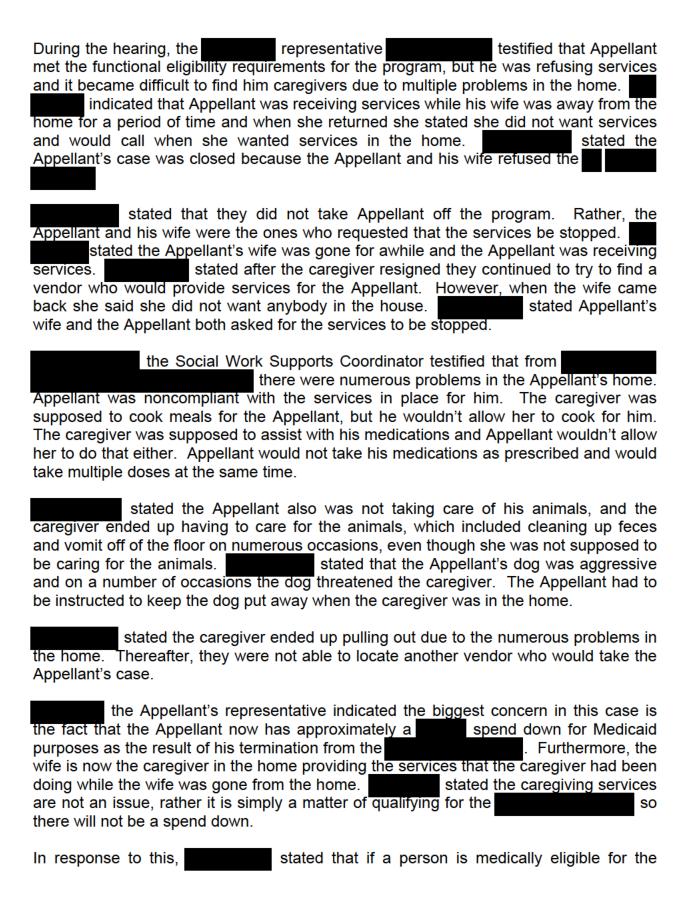
### **CONCLUSIONS OF LAW**

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 was receiving services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (CMS, formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies 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)*.

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program and is continuing to receive services, they can be on the and be eligible for Medicaid without having a spend down.

correctly pointed out, however, that a person cannot be placed on the program without receiving just to avoid having a spend down.

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2012, which provides in part:

#### **SECTION 2 – ELIGIBILITY**

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish their financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program. [p. 1].

#### 2.3 NEED FOR MI CHOICE SERVICES

In addition to meeting financial and functional eligibility requirements and to be enrolled in the program, MI Choice applicants must demonstrate the need for a minimum of one covered service as determined through an inperson assessment and the person-centered planning process.

**Note:** Supports coordination is considered an administrative activity in MI Choice and does not constitute a qualifying requisite service. Similarly, informal support services do not fulfill the requirement for service need.

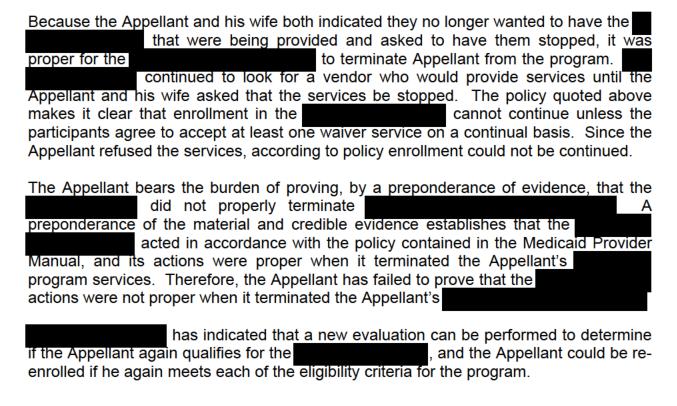
An applicant cannot be enrolled in MI Choice if their service and support needs can be fully met through the intervention of State Plan or other available services. State Plan and MI Choice services are not interchangeable. MI Choice services differ in nature and scope from

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similar State Plan services and often have more stringent provider qualifications. [p. 3].

#### **SECTION 3 – ENROLLMENT**

MI Choice waiver agencies determine the enrollment and termination dates for each participant for whom they provide waiver services. No applicant shall be granted enrollment status without fully meeting all eligibility requirements. Participants must agree to accept at least one waiver service on a continual basis in order to be enrolled in MI Choice. [p. 5].



## **DECISION AND ORDER**

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

#### IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

William D Bond

cc:

Date Mailed: \_\_\_4-10-12\_\_\_\_

#### \*\*\* NOTICE \*\*\*

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.