

**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:

██████████ Case

Docket No. 2012-64457 EDW

No. ██████████

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 daughter, appeared and testified on Appellant's behalf.

██████████ Care Management Department Supervisor, The Information Center, Inc., represented the Department's Waiver Agency. (Waiver Agency). ██████████, R.N. Supports Coordinator, appeared as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly transfer Appellant from the MI Choice Waiver Program to the DHS Home Help Service 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. The Appellant was enrolled in the MI Choice Waiver Program, receiving services through the Waiver Self Determination Program. Appellant's daughter, ██████████ was employed as her self-determination caregiver. (Exhibit 1 and Testimony).
2. The Waiver Agency 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. The Appellant's appropriateness for the DHS Home Help Services Program (HHS) was discussed with the Appellant and her daughter on ██████████. At that time, Appellant's daughter refused to sign the

application for HHS because that program would pay her fewer hours. (Exhibit A, Testimony)

4. The HHS program was again discussed with Appellant and her daughter on ██████████ but a transfer was not made at that time. During a reassessment on ██████████ it was determined that Appellant's needs could be met by the HHS program and the Waiver Agency processed an application on ██████████. The Waiver Agency determined that Appellant's personal care and homemaking needs could be met through the HHS program and that Appellant met the eligibility requirements as outlined in the Department of Human Services Adults Services Manual, Section 362. (Exhibit A, Testimony)
5. Appellant was successfully transferred from the MI Choice Waiver program to the Home Help Program on ██████████. (Exhibit A, Testimony)
6. On ██████████ the Michigan Administrative Hearing System received the Appellant's request for an administrative hearing. (Exhibit 1).

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 is claiming 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 (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case The Information Center, Inc., 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

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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)

Home and community based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. 42 CFR 440.180(a).

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization. 42 CFR 440.180(b).

On October 18, 2010, the Department issued MI Choice Operations Advisory Letter #26. The letter states in part:

MI CHOICE CONTRACT REQUIREMENTS

The MI Choice contract requires waiver agents to seek all other forms of payment before authorizing MI Choice services (Attachment K, pp. 43-44). The HHS program is another form of payment for home and community based services, and therefore the participant and supports coordinators must fully consider this option **before** MI choice enrollment. MI Choice participants cannot receive services from both the HHS program and MI Choice, as this is a duplication of Medicaid services. (Attachment K, pp. 25-26). (Exhibit 1, pp 9-12).

The Michigan Department of Community Health, Medical Services Administration issued bulletin number MSA 11- 27 on July 1, 2011, effective August 1, 2011, for the

purpose of adding a MI Choice Policy Chapter to the Medicaid Provider Manual. This new policy chapter provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDs). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).

* * *

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 his/her 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.

* * *

2.2.B. FREEDOM OF CHOICE

Applicants or their legal representatives must be given information regarding all long-term care service options for which they qualify through the NF LOCD, including MI Choice, Nursing Facility and the Program of All-Inclusive Care for the Elderly (PACE). That a participant might qualify for multiple programs does not mean they can be served by all or a combination thereof for which they qualify. Nursing facility, PACE, MI Choice, and Adult Home Help services may not be chosen in combination with each other. Applicants must indicate their choice, subject to the provisions of the Need for MI Choice Services subsection of this chapter, and document via their signature and date that they have been informed of their options via the Freedom of Choice (FOC) form that is provided to an applicant at the conclusion of any LOCD process. Applicants must also be informed of other service options that do not require Nursing Facility Level of Care, including Home Health and Home Help State Plan services, as well as other local public and private service entities. The FOC form must be signed and dated by the individual (or his/her legal representative) seeking services and is to be maintained in the participant case record.

* * *

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 in-person 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 his/her 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 similar State Plan services and often have more stringent provider qualifications. *Emphasis added.*

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

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Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home.

*Medicaid Provider Manual, MI Choice Waiver
June 28, 2011, pp 1-5*

The Waiver Agency representatives testified that it determined during reassessment that Appellant's personal care and homemaking needs could be met through the HHS program and that Appellant met the eligibility requirements as outlined in the Department of Human Services Adults Services Manual Section 362. The Waiver Agency representatives testified that Appellant was successfully transferred from the MI Choice Waiver program to the Home Help Program on ██████████ as required by Advisory Letter #26.

Appellant's daughter testified that Appellant cannot walk and requires 24 hour per day care. Appellant's daughter indicated that Appellant is obese and she cannot lift her. Appellant's daughter also testified that Appellant is no longer receiving adult diapers because her spend down under the HHS program is too large. Appellant's daughter also indicated that Appellant lost her first alert alarm when she was transferred to the HHS program.

The Waiver Agency representatives testified that Appellant would not be eligible for a first alert alarm because she has someone residing with her in the same home. The Waiver Agency representatives indicated that the only services affected by the transfer to HHS were personal care and homemaking, both of which are covered under the HHS program.

As indicated clearly above, the waiver agency must administer the MI Choice Waiver program in accordance with policy found in the Medicaid Provider Manual (MPM). The MPM indicates, "An applicant cannot be enrolled in MI Choice if his/her 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 similar State Plan services and often have more stringent provider qualifications." Here, the evidence shows that Appellant's needs can be met through DHS-HHS. The evidence also shows that Appellant's daughter resisted the transfer to HHS because she knew that her pay through self-determination would be less through DHS-HHS.

Weighing the evidence in this case the Waiver Agency provided a preponderance of evidence to show that the Appellant's needs could be met through the DHS-HHS Program along with the informal supports being provided by Appellant's daughter. The Appellant's main complaint seems to be that the amount of money through DHS-HHS is much less than she was receiving under the MI Choice Waiver Program, however, such

a complaint is irrelevant to the determination of whether Appellant's needs can be met through DHS-HHS.

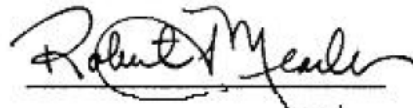
The Appellant did not prove by a preponderance of evidence that the Waiver Agency erred in finding that she was no longer eligible for the MI Choice Waiver Program. The Appellant did not provide any sworn testimony or evidence to show that her needs could not be met through the DHS-HHS program. Therefore, the Appellant's transfer to DHS-HHS program was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly transferred Appellant from the MI Choice Waiver program to the DHS-HHS program.

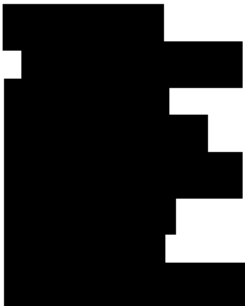
IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 10/11/2012

***** 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.