

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. 2012-24626 EDW

██████████
Appellant
_____ /

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 ██████████. ██████████ appeared and testified on Appellant's behalf. Appellant and ██████████, Appellant's sister/care provider, also testified on Appellant's behalf. ██████████, Waiver Supervisor, represented the Department of Community Health's Waiver Agency, the ██████████ social worker/supports coordinator, and ██████████, ██████████, also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's participation in the self-determination program of 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 and has been diagnosed with multiple sclerosis and optic neuritis NOS. (Exhibit 1, pages 33, 40-41).
2. ██████ 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. Appellant is enrolled in and has been receiving MI Choice waiver services through ██████. Specifically, Appellant had been receiving personal care and homemaking services. (Exhibit 1, page 5).

4. Appellant has also been directing her services through the self-determination program of the waiver program. (Exhibit 1, page 37).
5. While in the self-determination program, Appellant fell over twenty times in the month of ██████████ as she tried to transfer from her bed to her scooter. (Exhibit 1, page 39; Testimony of Appellant).
6. According to Appellant, the falls were due to an infection she had, the infection is now gone, and she has not fallen since ██████████. (Testimony of Appellant).
7. While Appellant was in the self-determination program, her sister/care provider submitted inaccurate and improper time/billing sheets. (Testimony of ██████████ Testimony of ██████████).
8. According to Appellant and her sister, the scheduling discrepancies have been correct and the Waiver Agency was able to recoup the money improperly paid. (Testimony of Appellant; Testimony of ██████████). The Waiver Agency's representative could neither confirm nor deny that a recoupment action had been taken. (Testimony of ██████████).
9. On ██████████, ██████████ sent Appellant a notice that it terminating her participation in the self-determination program. The reason given in the notice was "Health [and] Safety of participant." (Exhibit 1, page 5).
10. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 2, page 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.

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))

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))

Regarding self-determination, the Medicaid Provider Manual (MPM) provides:

6.3. SELF-DETERMINATION

Self-Determination provides MI Choice participants the option to direct and control his/her own waiver services. Not all MI Choice participants choose to participate in self-determination. For those that do, the participant (or chosen representative(s)) has decision-making authority over workers who provide waiver services, including:

- Recruiting staff
- Referring staff to an agency for hiring (co-employer)
- Selecting staff from worker registry
- Hiring staff (common law employer)
- Verifying staff qualifications
- Obtaining criminal history and background investigation of staff
- Specifying additional service or staff qualifications

based on the participant's needs and preferences so long as such qualifications are consistent with the qualifications specified in the approved waiver application and the Minimum Operating Standards

- Specifying how services are provided and determining staff duties consistent with the service specifications in the approved waiver application and the Minimum Operating Standards
- Determining staff wages and benefits, subject to State limits (if any)
- Scheduling staff and the provision of services
- Orienting and instructing staff in duties
- Supervising staff
- Evaluating staff performance
- Verifying time worked by staff and approving timesheets
- Discharging staff (common law employer)
- Discharging staff from providing services (co-employer)
- Reallocating funds among services included in the participant's budget
- Identifying service providers and referring for provider enrollment
- Substituting service providers
- Authorizing payment for Goods and Services
- Reviewing and approving provider invoices for services rendered

Participant budget development for participants in self-direction occurs during the person-centered planning process and is intended to involve individuals the participant chooses. Planning for the participant's plan of service

precedes the development of the participant's budget so that needs and preferences can be accounted for without arbitrarily restricting options and preferences due to cost considerations. An participant's budget is not authorized until both the participant and the waiver agency have agreed to the amount and its use. In the event that the participant is not satisfied with the authorized budget, he/she may reconvene the person-centered planning process. The waiver services of Fiscal Intermediary and Goods and Services are available specifically to self-determination participants to enhance their abilities to more fully exercise control over their services.

The participant may, at any time, modify or terminate the arrangements that support self-determination. The most effective method for making changes is the person-centered planning process in which individuals chosen by the participant work with the participant and the supports coordinator to identify challenges and address problems that may be interfering with the success of a self-determination arrangement. The decision of a participant to terminate participation in self-determination does not alter the services and supports identified in the participant's plan of service. When the terminate participation, the waiver agency has an obligation to assume responsibility for assuring the provision of those services through its network of contracted provider agencies.

A waiver agency may terminate self-determination for a participant when problems arise due to the participant's inability to effectively direct services and supports. Prior to terminating a self-determination agreement (unless it is not feasible), the waiver agency informs the participant in writing of the issues that have led to the decision to terminate the arrangement and continues trying to resolve the issues that led to the termination.

(MPM, MI Choice Waiver Chapter, pages 20-21)

The above policy identifies the grounds for when a waiver agency may terminate self-determination, *i.e.* "when problems arise due to the participant's inability to effectively direct services and supports" (MPM, MI Choice Waiver Chapter, page 21). Here, as discussed above, the Waiver Agency terminated the self-determination program because of safety concerns and concerns over the billing. Appellant does not dispute that she had over twenty falls in ██████████ and that her sister submitted improper and inaccurate time/billing sheets. Appellant did testify, however, that the infection causing

her falls is now gone and that the financial issues have also been resolved.

Nevertheless, this Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information available at the time it made that decision. Here, that information includes an undisputed record of falls by Appellant and mismanagement by her care giver. Given those issues and the problems that arose from Appellant's inability to effectively manage his budget and direct his services/supports, the Waiver Agency's decision to terminate Appellant's participation in the self-determination program must be sustained. To the extent Appellant now asserts that all the issues have been resolved, she is free to reapply for the self-determination program.

DECISION AND ORDER

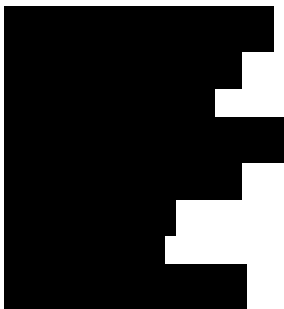
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly terminated Appellant's participation in the self-determination program of the MI Choice waiver program based on the information available at the time.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is **AFFIRMED**.

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

cc:



Date Mailed: 4-3-12

***** 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.