

**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:

██████████,

Appellant

Docket No. 2012-██████████
Case No. 91848963

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████ ██████████, Appellant's sister and caregiver, appeared and testified on Appellant's behalf. ██████████ Page, Waiver Manager, represented the Department of Community Health's Waiver Agency, the Senior Alliance ██████████ ("Waiver Agency" or "Senior Alliance").

ISSUE

Did the Waiver Agency properly deny Appellant services through the MI Choice waiver program between ██████████ ██████████?

FINDINGS OF FACT

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

1. Senior Alliance 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.
2. Appellant is a ██████████ year-old woman who has been enrolled in and receiving MI Choice waiver services through Senior Alliance for approximately three years. (Exhibit 1, page 4; ██████████).
3. Over the past three years, Appellant has gone to a nursing facility for respite care approximately ██████████ to ██████████ times. (Testimony of ██████████ Each time, Appellant's services were reinstated without incident. (Testimony of ██████████).
4. On ██████████ Appellant's representative telephoned Senior Alliance to let them know that Appellant was going into a nursing facility on

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- [REDACTED] No one answered and Appellant's representative's left a message regarding respite. (Testimony of [REDACTED]).
5. However, due to Senior Alliance staff changes, Appellant's representative telephoned the wrong number and Senior Alliance never received the message. ([REDACTED]).
 6. Appellant returned from the nursing facility on [REDACTED]. (Testimony of [REDACTED]).
 7. Appellant's representative telephoned Senior Alliance again on [REDACTED] but she had to leave another message. That message contained no details regarding why Appellant's representative was calling. (Testimony of [REDACTED]).
 8. The second message was brought to [REDACTED] attention and she telephoned Appellant's representative on [REDACTED]. No one answered and Page left a message. ([REDACTED]).
 9. Appellant's representative telephoned [REDACTED] on [REDACTED] and they were able to speak. ([REDACTED]).
 10. Later that day, Page went to Appellant's home and completed a new Nursing Facility Level of Care (NFLOC) determination. ([REDACTED]).
 11. Appellant was then re-enrolled in the waiver program. ([REDACTED]).
 12. On [REDACTED], Senior Alliance sent Appellant a notice that it was denying her request for waiver services between [REDACTED] and [REDACTED] as she was not enrolled in the waiver program during that time period. (Exhibit 2, page 3).
 13. On [REDACTED], the Department received a Request for Hearing regarding the denial in this case. (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 Senior Alliance, 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))

Moreover, with respect to participation in the waiver program, the Medicaid Provider Manual states:

3.1 GENERAL PROVISIONS OF PARTICIPATION

There are a number of circumstances that play a role in the eligibility status of MI Choice participants. The following subsections define these impacts.

3.1.A. ENROLLMENT IN MEDICAID HEALTH PLANS AND OTHER PROGRAMS

A program participant cannot be simultaneously enrolled in both MI Choice and a Medicaid Health Plan, PACE program, or any other §1915(c) waiver. Applicants must choose one program in which they wish to enroll. It is not necessary to either delay MI Choice enrollment or withhold MI Choice services

pending the disenrollment process from any of the Medicaid Health Plans.

3.1.B. INSTITUTIONAL STAYS

There are occasions when a MI Choice participant requires a short-term admission to an institutional setting for treatment. The impact of such an institutional stay is dependent on the type of admission and the length of the stay.

A short-term hospital admission does not necessarily impact a participant's MI Choice enrollment status. The participant's supports coordinator must temporarily suspend the delivery of waiver services during the hospital stay to avoid unnecessary or redundant service delivery from the hospital or MI Choice, however the supports coordinator is not required to remove the participant from MI Choice. A participant who is hospitalized for more than 30 days must have their enrollment suspended.

A participant admitted to a nursing facility for rehabilitation services or for any reason must be removed from MI Choice on the date prior to the nursing facility admission. The person may be re-enrolled into MI Choice upon discharge from the nursing facility, subject to the enrollment status of the agency.

(MPM, MI Choice Waiver Chapter
January 1, 2012, page 5 (emphasis added))

The above policy provides that a participant admitted to a nursing facility for rehabilitation services or for any reason must be removed from MI Choice on the date prior to the nursing facility admission and may be re-enrolled upon discharge. Moreover, no services can be authorized while the participant is not enrolled

Here, it is undisputed that Appellant was receiving respite services at a nursing facility from ██████████ to ██████████. Moreover, even Appellant's representative conceded during the hearing that Appellant had to be re-enrolled in the waiver program after returning from respite and that she was not re-enrolled until ██████████. Accordingly, services could not resume until ██████████.

Appellant's representative does argue that it would be unfair to penalize Appellant where Appellant's representative diligently informed the Waiver Agency of Appellant's

respite and it was the fault of the Waiver Agency that Appellant was not re-enrolled immediately. However, even assuming for the sake of argument that Appellant's representative's version of events is true, this Administrative Law Judge does not possess equitable jurisdiction and cannot award relief as a matter of fairness. This Administrative Law Judge is bound to follow the mandated policy and, in this case, that policy dictates that the Waiver Agency's decision be affirmed.

Appellant's representative also argues that, in the past, the Waiver Agency has allowed services to resume immediately after Appellant returned from respite, even in cases where a new NFLOC determination was not completed on that date of return. However, whether or not the Waiver Agency failed to comply with policy in the past, those past occurrences are not before this Administrative Law Judge. In this case, the Waiver Agency complied with policy and its decision must be affirmed.

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 MI Choice waiver services between [REDACTED] and [REDACTED]

IT IS THEREFORE ORDERED that:

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

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.