

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. 2012-42451 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 ██████████. Attorney ██████████ appeared and testified on behalf of the Appellant. ██████████ Appellant was not present for the hearing.

██████████, ██████████, ██████████ appeared and testified on behalf of the Department's Waiver Agency. ██████████, a Social Worker ██████████, appeared as a witness for the ██████████ ██████████ RN, ██████████ ██████████ 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 ██████████ since ██████████. 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 ██████████, DOB 4/12/1946, who is undergoing dialysis ██████████ days per week and who has previously been diagnosed with bi-

- 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 ██████████, the MAHS received the Appellant's request for an 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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During the hearing, the ██████████ representative ██████████ testified that Appellant met the functional eligibility requirements for the program, but he was refusing services and it became difficult to find him caregivers due to multiple problems in the home. ██████████ indicated that Appellant was receiving services while his wife was away from the home for a period of time and when she returned she stated she did not want services and would call when she wanted services in the home. ██████████ stated the Appellant's case was closed because the Appellant and his wife refused the ██████████ ██████████

██████████ stated that they did not take Appellant off the program. Rather, the Appellant and his wife were the ones who requested that the services be stopped. ██████████ stated the Appellant's wife was gone for awhile and the Appellant was receiving services. ██████████ stated after the caregiver resigned they continued to try to find a vendor who would provide services for the Appellant. However, when the wife came back she said she did not want anybody in the house. ██████████ stated Appellant's wife and the Appellant both asked for the services to be stopped.

██████████ the Social Work Supports Coordinator testified that from ██████████ there were numerous problems in the Appellant's home. Appellant was noncompliant with the services in place for him. The caregiver was supposed to cook meals for the Appellant, but he wouldn't allow her to cook for him. The caregiver was supposed to assist with his medications and Appellant wouldn't allow her to do that either. Appellant would not take his medications as prescribed and would take multiple doses at the same time.

██████████ stated the Appellant also was not taking care of his animals, and the caregiver ended up having to care for the animals, which included cleaning up feces and vomit off of the floor on numerous occasions, even though she was not supposed to be caring for the animals. ██████████ stated that the Appellant's dog was aggressive and on a number of occasions the dog threatened the caregiver. The Appellant had to be instructed to keep the dog put away when the caregiver was in the home.

██████████ stated the caregiver ended up pulling out due to the numerous problems in the home. Thereafter, they were not able to locate another vendor who would take the Appellant's case.

██████████ the Appellant's representative indicated the biggest concern in this case is the fact that the Appellant now has approximately a ██████████ spend down for Medicaid purposes as the result of his termination from the ██████████. Furthermore, the wife is now the caregiver in the home providing the services that the caregiver had been doing while the wife was gone from the home. ██████████ stated the caregiving services are not an issue, rather it is simply a matter of qualifying for the ██████████ so there will not be a spend down.

In response to this, ██████████ stated that if a person is medically eligible for the

program and is continuing to receive services, they can be on the [REDACTED] and be eligible for Medicaid without having a spend down. [REDACTED] correctly pointed out, however, that a person cannot be placed on the program without receiving [REDACTED] 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 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 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

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].

Because the Appellant and his wife both indicated they no longer wanted to have the ██████████ that were being provided and asked to have them stopped, it was proper for the ██████████ to terminate Appellant from the program. ██████████ continued to look for a vendor who would provide services until the Appellant and his wife asked that the services be stopped. The policy quoted above makes it clear that enrollment in the ██████████ cannot continue unless the participants agree to accept at least one waiver service on a continual basis. Since the Appellant refused the services, according to policy enrollment could not be continued.

The Appellant bears the burden of proving, by a preponderance of evidence, that the ██████████ did not properly terminate ██████████. A preponderance of the material and credible evidence establishes that the ██████████ acted in accordance with the policy contained in the Medicaid Provider Manual, and its actions were proper when it terminated the Appellant's ██████████ program services. Therefore, the Appellant has failed to prove that the ██████████ actions were not proper when it terminated the Appellant's ██████████.

██████████ has indicated that a new evaluation can be performed to determine if the Appellant again qualifies for the ██████████, and the Appellant could be re-enrolled if he again meets each of the eligibility criteria for the program.

[REDACTED]
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DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

William D Bond

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

cc:

[REDACTED]

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.