

**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) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-19773 EDW
Case No. ██████████

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 ██████████ appeared and testified on behalf of the Appellant.

██████████, Macomb-Oakland Regional Center, Inc. (MORC) Home Care, Inc, Program Manager appeared and testified on behalf of the Department's Waiver Agency. ██████████, LBSW, Appellant's Social Work Supports Coordinator with MORC also testified on behalf of the Waiver Agency.

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 is an 89-year-old woman, (DOB: ██████████), who was enrolled in the MI Choice Waiver Program. (Exhibits A, C and Testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
3. On ██████████, ██████████, LBSW, Appellant's Social Work Supports Coordinator, met with Appellant to do a Nursing Facility Level of Care Determination (LOCD) to determine Appellant's continued eligibility for the MI Choice Waiver Program. ██████████ found the Appellant did

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qualify for nursing home level of care through Door 1. However, since Appellant's needs could be met through the Home Help program through Department of Human Services (DHS), she was given a referral for that program. (Exhibits A, E and Testimony).

4. On [REDACTED], Appellant was advised that she was going to be terminated from the MI Choice Waiver Program. The Department then sent her an Adequate Action notice advising that she was being terminated, but citing the wrong reason for the termination. (Exhibit E and Testimony).
5. On [REDACTED], the waiver agency sent an Advance Action Notice to the Appellant notifying her she was no longer medically eligible for the MI Choice Waiver services and of the termination of her personal care and homemaking services. (Exhibit C and Testimony).
6. On [REDACTED], MAHS 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 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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On [REDACTED], 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 B).

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2013, which 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:

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- 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. (p.1, emphasis added).

* * *

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. (pp. 2-3, emphasis added).

* * *

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. (p. 3, emphasis added).

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

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. (p. 4).

The Waiver Agency provided reliable evidence that on ██████████, ██████████, LBSW, Appellant's Social Work Supports Coordinator met with Appellant at her home to do a Nursing Facility Level of Care Determination (LOCD) to determine Appellant's continued eligibility for the MI Choice Waiver Program. ██████████ found the Appellant did qualify for nursing home level of care through Door 1. However, since Appellant's needs could be met through the Home Help Program with the Department of Human Services (DHS), she was given a referral for that program. (Exhibits A, E and Testimony).

██████████ stated on ██████████, Appellant was advised that she was going to be terminated from the MI Choice Waiver Program. The Department then sent her an Adequate Action notice advising that she was being terminated, but citing the wrong reason for the termination. ██████████ stated on ██████████ she sent Appellant an Advance Action notice advising that her MI Choice services would be terminated including her personal care and homemaking services. (See Exhibit C and Testimony).

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██████████ also provided Appellant with information on the Home Help Program and the Appellant's rights to request a hearing concerning the termination of her MI Choice services. ██████████ encouraged Appellant to apply for the home help services to avoid a possible lapse in coverage. She stated the Appellant could continue to receive services from the same agency she was receiving her waiver services from, also it was suggested Appellant might even be eligible for additional services through the DHS Home Help Program. ██████████ indicated that the Appellant has applied for the Home Help Services, and is awaiting her assessment.

Appellant's ██████████ testified the Appellant had been on the MI Choice waiver program and that it makes no sense that she is now being terminated from the program. The ██████████ pointed out that the Appellant was found to qualify through Door 1 at the time of her reassessment, and she felt based on her ██████████ condition, and recent medical appointments, that she should also qualify through Door 2 for the program. The ██████████ stated the Appellant is ██████ years old and is getting frailer by the day. The ██████████ urged that the Appellant has increased needs and needs more hours of help from a caregiver not less help.

The Appellant bears the burden of proving, by a preponderance of evidence, that the waiver agency did not properly terminate her MI Choice Waiver services. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver agency acted in accordance with the policy contained in the Medicaid Provider Manual, and its actions were proper when it terminated the Appellant's MI Choice program services.

The policy in the Medicaid Provider manual makes it clear that an individual must be financially eligible, functionally eligible, and meet the service dependency for the program. In this case the preponderance of the evidence did not show the need for MI Choice services at the time of the Appellant's reassessment. The preponderance of the evidence demonstrates that the needs of the Appellant can be fully met through the DHS Home Help Program. Accordingly, the Appellant cannot remain enrolled in the MI Choice Waiver Program. The Appellant has failed to prove the waiver agency's actions were not proper when it terminated her MI Choice program services.

Based upon the reassessment performed by the waiver agent on ██████████, the Appellant was not eligible for MI Choice program at the time they terminated her services, because her needs could be fully met by the DHS Home Help Program.

DECISION AND ORDER

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

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IT IS THEREFORE ORDERED that:

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

/s/

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: February 14, 2013

***** 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.