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:

[redacted]

Docket No. 2013-21425 EDW
Case No. [redacted]

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 [redacted], Appellant's [redacted] appeared and testified on Appellant's behalf. [redacted] appeared as a witness for Appellant.

[redacted], LBSW, Contract Manager, represented Region 2 Area Agency on Aging, the Department's Waiver Agency. (Waiver Agency or AAA). [redacted], Clinical Manger and [redacted], Quality Manager, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant from 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. The Appellant has been enrolled in the MI Choice Waiver Program, receiving services through the Waiver Self Determination Program, since [redacted]. Appellant's uncle was employed as his worker/caregiver. (Exhibit A; 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 is a [redacted] year-old male, born [redacted], who is diagnosed with mild mental retardation. (Exhibit 1)

4. On [redacted] a hearing was held at [redacted] Community Mental Health, where it was discovered by the Waiver Agency that Appellant was receiving services through CMH. As a result, the Waiver Agency closed Appellant's case and sent him an Adequate Action Notice, which also contained his hearing rights, on [redacted]. (Exhibit A, p 1, 5; Testimony).

5. On [redacted], the Michigan Administrative Hearing System received the Appellant's request for hearing. (Exhibit 2).

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 Region 2 Area Agency on Aging, 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)*

> 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).

The Michigan Department of Community Health, Medical Services Administration issued bulletin number MSA 11-27 on [redacted], effective [redacted], 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. *Emphasis added*.

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

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 [redacted]*, pp 1-5*

The Waiver Agency's representative testified that she learned that Appellant was also receiving services through CMH when she was asked to attend a hearing at CMH with Appellant on [redacted]. The Waiver Agency's representative indicated that it appeared from the hearing that Appellant's needs would be better met through CMH. The Waiver Agency's representative testified that she closed Appellant's case because of this fact and the fact that to continue services would result in a duplication of services, contrary to policy in the Medicaid Provider Manual.

Appellant's [redacted] testified that she did not realize Appellant needed to make a choice between receiving services through CMH and the Waiver Agency. Appellant's [redacted] indicated that CMH has been providing some services to Appellant, but that CMH also is waiting to see how the instant hearing turns out before providing more services. Appellant's [redacted] indicated that the CMH workers have come in and tried to help Appellant learn how to do things himself, as opposed to before when his [redacted] could just do things for him. Appellant's [redacted] indicated that Appellant will never learn to do things himself. Appellant's [redacted] testified that Appellant is seeing a psychologist through CMH at the present time. Appellant's [redacted] indicated that Appellant needs help with almost all activities of daily living.

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 provides, "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 CMH.

Weighing the evidence in this case the Waiver Agency provided a preponderance of evidence to show that the Appellant was no longer eligible for the MI Choice Waiver Program. When the Waiver Agency attended a hearing at CMH with Appellant in [redacted], it realized that Appellant's needs would be better met through CMH.

The Appellant did not prove by a preponderance of evidence that the Waiver Agency erred in finding that he was no longer eligible for the MI Choice Waiver Program. The Appellant did not provide any sworn testimony or evidence to show that the Appellant's needs could not be met through CMH. Therefore, the Appellant is not eligible for the MI Choice Waiver Program and should continue to receive services through CMH.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined the Appellant was not eligible for the MI Choice Waiver Program.

[redacted]
Docket No. 2013-21425 EDW
Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

/s/

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

cc: [redacted]

Date Mailed: February 28, 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.