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]

Appellant
_____/

Docket No. 2013-22497 EDW
Case No. [redacted]

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, [redacted] appeared and testified on his own behalf.

[redacted], Clinical Manager, appeared and testified on behalf of the [redacted], the Department's Waiver Agency. (Waiver Agency or [redacted]).

ISSUE

Did the Waiver Agency properly determine that Appellant was not eligible for the MI Choice Waiver Program because his needs were being met through the Department of Human Services' Home Help Services Program (DHS-HHS)?

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 a [redacted] year old Medicaid beneficiary, born [redacted], who was assessed for the MI Choice Waiver Program beginning on [redacted]. (Exhibit A, p 6; 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 diagnosed with hypertension, arthritis, depression, hemiplegia, multiple sclerosis, paraplegia, increased cholesterol, spasms, and acid reflux. (Exhibit A, pp 14-15)

4. The Appellant lives with his wife and two adult children and is confined to a wheelchair. Appellant's wife and children are his primary caregivers. Appellant's wife's family also lives in the area and is a great source of support and help. (Exhibit A, p 14; Testimony)

5. On [redacted], a full assessment of the Appellant was done by the Waiver Agency to determine eligibility for the MI Choice Waiver Program. (Exhibit A, pp 6-21)

6. During the assessment, the Waiver Agency's Care Manager and Nurse determined that Appellant was medically eligible for the MI Choice Waiver Program through Door 1. The Waiver Agency was not made aware at this meeting that Appellant was already receiving DHS-HHS. (Exhibit A, p 21; Testimony)

7. On [redacted], a person centered plan meeting and discussion of services was held with Appellant and his primary care manager. It was determined that Appellant was eligible for 16.5 hours per week of services through the MI Choice Waiver Program. However, it was also discovered during this meeting that Appellant was already receiving services through DHS-HHS and that those services were more than what Appellant would receive through the MI Choice Waiver Program. (Exhibit A, pp 3; 25-27 Testimony)

8. On [redacted], a case conference was held between the Care Manager and Nurse who originally assessed Appellant, the Primary Care Manager who assessed Appellant on [redacted], and the Waiver Agency Director, who is also an R.N. All parties agreed that the determination that Appellant was entitled to 16.5 hours per week of services through the MI Choice Waiver Program was correct. (Exhibit A, p 3; Testimony)

9. On [redacted], the Waiver Agency sent Appellant an Adequate Action Notice informing him that he was not eligible for the MI Choice Waiver Program because his needs were being met through DHS-HHS. (Exhibit A, pp 4-5; Testimony)

10. On [redacted], the Michigan Administrative Hearing System 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 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 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).

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).

The Medicaid Provider Manual, MI Choice Waiver Program 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.

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. 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.

* * *

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 Section
January 1, 2013, pp 1-5

The Waiver Agency's witness testified that when Appellant was assessed on [redacted], the Waiver Agency was not informed that he was receiving services through DHS-HHS. The Waiver Agency's witness indicated that at his person centered planning meeting on [redacted], it was determined that Appellant would be eligible for 16.5 hours per week of MI Choice Waiver Services. However, the Waiver Agency also learned during this meeting that Appellant was receiving DHS-HHS, and that his DHS-HHS were more than 16.5 hours per week. As such, the Waiver Agency determined that Appellant was not eligible for the MI Choice Waiver Program because his needs were being met through DHS-HHS. Appellant was encouraged to Appeal his HHS determination to see if he could obtain more hours of service there.

Appellant testified that currently he is not receiving any services because of a temporary problem with his Medicaid eligibility. However, Appellant admitted that he was receiving DHS-HHS at the time he was assessed for the MI Choice Waiver Program. Appellant testified that he thought the original persons who assessed him for the MI Choice Waiver Program on [redacted] did a thorough and proper assessment, but that the gentleman who did the assessment on [redacted] did not do an adequate

job. Appellant explained that he is totally handicapped and needs at least four hours of assistance per day.

The Waiver Agency's witness testified that the calculation of 16.5 hours per week of MI Choice Waiver services was confirmed following a case conference that included the nurse and care manager who assessed Appellant on [redacted], the primary care manager who assessed Appellant on [redacted], and the Waiver Agency Director, who is also an R.N. The Waiver Agency's witness testified that all parties agreed that the determination of Appellant's need for 16.5 hours per week of MI Choice Waiver services was correct.

As indicated above, 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, at the time he was assessed for the MI Choice Waiver Program, Appellant's needs were being met through the DHS-HHS program.

Based on the evidence presented, the Waiver Agency properly determined that Appellant was not eligible for the MI Choice Waiver program because his needs were being met through the Home Help Services program.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: _4/5/2013_

***** 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.