

**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. 2013-27165 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.* and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ Appellant's sister, appeared and testified on her own behalf. Appellant; ██████████ Appellant's sister; ██████████ clinical social worker; ██████████ family friend; ██████████, ██████████ lead supervisor; and ██████████, Director of ██████████; also appeared as witnesses on behalf of Appellant. ██████████ represented the Department of Community Health's Waiver Agency, The Senior Alliance-1C ("Waiver Agency" or ██████████). ██████████, social worker/supports coordinator, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency proper terminate Appellant's services through 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. Appellant is a ██████-year-old male who has been diagnosed with a traumatic brain injury, arthritis, dementia, seizure disorder, anxiety, depression, and hyperlipidemia. (Respondent's Exhibit 2, pages 1, 9-10).
2. ██████████ 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. Appellant has been enrolled in and receiving MI Choice waiver services through ██████████, including medication management and residential care services at a per diem rate at the assisted living home he lives at. Those residential care services include assistance with personal care tasks as well as assistance with homemaking, meal preparation,

managing finances, and shopping. (Respondent's Exhibit 2, pages 18-19).

4. On ██████████, ██████████ staff completed a reassessment of Appellant's services and a new Level of Care Determination (LOCD) regarding Appellant's needs. (Respondent's Exhibit 2, pages 1-19; Respondent's Exhibit 3, pages 1-9).
5. That same day, ██████████ sent Appellant written notice that his services would be terminated on ██████████. As stated in that notice:

Although you qualify for the Medicaid Waiver Program through the Nursing Facility Level of Care, you do not appear dependent on Waiver services. Your needs may potentially be met through Community Mental Health Waiver. You can contact this program at ██████████. [Respondent's Exhibit 5, page 1.]

6. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed on behalf of Appellant. (Petitioner's Exhibit 1, 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.

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 ██████████, 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. See 42 CFR 430.25(c)(2).

Types of services that may be offered include:

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).]

Here, ██████████ decided to terminate Appellant’s services after finding that he was not dependent on waiver services. Specifically, the policy provided by Respondent states:

D. ESTABLISHING WAIVER ELIGIBILITY

All applicants must meet three conditions for MI Choice eligibility:

* * *

3. Service Need

SCs document the need for one (or more) MI Choice service, or the need for monthly monitoring, as a condition of participation in MI Choice, SCs determine [Respondent’s Exhibit 1, pages 1-2.]

Similarly, with respect to functional eligibility for the waiver program, the applicable version of the Medicaid Provider Manual (MPM) provides:

2.2 FUNCTIONAL ELIGIBILITY

The MI Choice waiver agency must verify applicant appropriateness for services by completing the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) within 14 calendar days after the date of the participant's enrollment. (Refer to the Directory Appendix for website information.) The LOCD is discussed in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter. Additional information can be found in the Nursing Facility Coverages Chapter and is applicable to MI Choice applicants and participants.

The applicant must also demonstrate a continuing need for and use of at least one covered MI Choice service.

This need is originally established through the Initial Assessment using the process outlined in the Need For MI Choice Services subsection of this chapter. [MPM, MI Choice Waiver Chapter, October 1, 2012, pages 1-2 (emphasis added by Administrative Law Judge).]

In this case, Respondent's representative and witness acknowledge that Appellant still has a need for services such as medication management, meal preparation and homemaking, and that those services are covered MI Choice services. Accordingly, Appellant appears to satisfy the service need and functional eligibility requirements identified above.

In response, Respondent's representative asserts that, while Appellant has a continuing need for other MI Choice services, Appellant does not require any personal care services and, therefore, is ineligible for the MI Choice program. However, even if that were true, Respondent's representative and witness also acknowledged that there is no written policy stating that a MI Choice waiver program participant must have a need for personal care services in order to be eligible for the program. (Testimony of ██████████. Testimony of ██████████. According to Respondent's representative, the requirement that a participant has a need for personal care services was only an oral directive within the Waiver Agency. (Testimony of ██████████.

Respondent's representative further asserts that the MI Choice waiver program is a payor of last resort and, therefore, should not have to pay for Appellant's services. The MPM does provide as part of MI Choice eligibility that: "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." (MPM, MI Choice Waiver Chapter, October 1, 2012, page 1).

However, in this case, there is simply no evidence or documentation that any other plan or service can meet Appellant's needs. Respondent's representative and witness concede that it has not been established that any other State Plan or services can meet Appellant's needs. (Testimony of [REDACTED]; Testimony of [REDACTED]). Moreover, while the termination notice states that Appellant's "needs may potentially be met through Community Mental Health Waiver" (Respondent's Exhibit 5, page 1), Respondent's representative and witness also testified that Appellant has not otherwise even been referred to any other program. (Testimony of [REDACTED]; Testimony of [REDACTED]).

Given Appellant's undisputed continuing need for MI Choice waiver services and the lack of support for the termination in the applicable policy, the Waiver's Agency's decision to terminate Appellant's services through the Waiver Program must be reversed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision to terminate Appellant's waiver services is **REVERSED**.

Steven Kibit

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

cc:

[REDACTED]

Date Mailed: April 17, 2013

[REDACTED]
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***** 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.