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. 2013-31833 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 daughter/DPOA [redacted] appeared and testified on behalf of the Appellant.

[redacted], Clinical Manager MI Choice, [redacted], appeared and testified on behalf of the Department's Waiver Agency.

ISSUE

Did the Department's Waiver Agency properly deny Appellant's request for 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 [redacted]-year-old female, (DOB: [redacted]), who requested enrollment in the MI Choice Waiver Program. (Exhibit A, p. 3 and testimony).

2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.

3. On [redacted], Appellant was assessed for the MI Choice Waiver Program. It was determined that the Appellant was enrolled in the Home Help Services (HHS) program through Department of Human Services (DHS) and was currently receiving 130.55 hours of HHS per month. Since Appellant was already enrolled in the HHS program she was not eligible for enrollment in the MI Choice Waiver program. (Exhibit A, pp. 3, 4-5, Exhibit 2 and testimony).

4. On or about [redacted], Appellant was sent an Adequate Action notice advising that she was not eligible for the MI Choice waiver program, because she was enrolled in the HHS Program and it had not been determined that the HHS program could not fully meet the Appellant's needs. (Exhibit A, p. 3 and testimony).

5. 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)*].

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 A, pp. 4-6).

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 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:

- 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.A. MICHIGAN MEDICAID NURSING FACILITY LEVEL OF CARE DETERMINATION

MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination. The LOCD is available online through Michigan's Single Sign-on System. Refer to the Directory Appendix for website information. Applicants must qualify for functional eligibility through one of seven doors.
These doors are:

- Door 1: Activities of Daily Living Dependency
- Door 2: Cognitive Performance
- Door 3: Physician Involvement
- Door 4: Treatments and Conditions
- Door 5: Skilled Rehabilitation Therapies
- Door 6: Behavioral Challenges
- Door 7: Service Dependency

The LOCD must be completed in person by a health care professional (physician, registered nurse (RN), licensed practical nurse (LPN), licensed social worker (BSW or MSW), or a physician assistant) or be completed by staff that have direct oversight by a health care professional.

The online version of the LOCD must be completed within fourteen (14) calendar days after the date of enrollment in MI Choice for the following:

- All new Medicaid-eligible enrollees
- Non-emergency transfers of Medicaid-eligible participants from their current MI Choice waiver agency to another MI Choice waiver agency
- Non-emergency transfers of Medicaid-eligible residents from a nursing facility that is undergoing a voluntary program closure and who are enrolling in MI Choice

Annual online LOCDs are not required; however, subsequent redeterminations, progress notes, or participant monitoring notes must demonstrate that the participant continues to meet the level of care criteria on a continuing basis. If waiver agency staff determines that the participant no longer meets the functional level of care criteria for participation (e.g., demonstrates a significant change in condition), another face-to-face online version of the LOCD must be conducted reflecting the change in functional status. This subsequent redetermination must be noted in the case record and signed by the individual conducting the determination. (pp. 1-2).

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).

The Waiver Agency provided reliable evidence that on [redacted], the Appellant was assessed for the MI Choice Waiver Program. (Exhibit A, p. 3 and testimony). It was determined that the Appellant was enrolled in the Home Help Services (HHS) program through Department of Human Services (DHS) and was currently receiving 130.55 hours of HHS per month (Exhibit A, p 3 and testimony). Since Appellant was already enrolled in the HHS program she was not eligible for enrollment in the MI Choice Waiver program.

It was determined that the Appellant had been denied an increase in Home Help Services, but she had not appealed the denial of the request for additional services. (Exhibit 2 and testimony). The Waiver Agency concluded that since the Appellant could not be enrolled in both the MI Choice Waiver Program and the HHS program at the same time, Appellant must exhaust her appeal rights under the Home Help program before she could be considered for the MI Choice Waiver program. (Exhibit A, p. 3 and testimony).

Appellant's daughter testified the Appellant has dementia and can't do anything for herself. Appellant's daughter stated it takes two people to lift the Appellant into her wheel chair, or for toileting. Appellant's daughter stated her mother is too heavy and she isn't strong enough to lift her by herself. She also stated she has to feed the Appellant, wipe her nose, groom her, bathe her, and totally dress her. Appellant's daughter stated she needs help caring for her mother, and there are no other relatives who can assist her.

The Appellant's daughter acknowledged that DHS denied her request for additional HHS hours for her mother's care on [redacted]. (Exhibit 2). She stated she had not filed an additional appeal with DHS in response to their denial of additional HHS hours. She was advised by the Waver Agent's representative how to go about filing for such an appeal.

The Appellant bears the burden of proving, by a preponderance of evidence, that the waiver agency did not properly deny her enrollment in the MI Choice Waiver program. 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 denied the Appellant enrollment in the MI Choice program.

The policy in the Medicaid Provider manual makes it clear that an individual cannot be enrolled in both the Home Help Program and the MI Choice Waiver Program. The preponderance of the evidence demonstrates that the Appellant is already enrolled in

the Home Help program, and until it is determined that the Home Help program cannot fully meet her needs through an increase in Home Help Services, the Appellant cannot be considered for enrollment in the MI Choice Waiver program. The Appellant has failed to prove the waiver agency's actions were not proper when it denied her enrollment in the MI Choice program.

Based upon the assessment performed by the Waiver Agent on [redacted], the Appellant was not eligible for MI Choice program at the time they denied her enrollment in the program, because she was already enrolled the DHS Home Help Program, and it had not been shown that her needs could not be fully met by the 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 denied Appellant's enrolment in the MI Choice Waiver program.

IT IS THEREFORE ORDERED that:

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

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

cc: [redacted]

Date Mailed: 4/18/2013

***** 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.