

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. 2013-32314 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 daughter/caregiver appeared and testified on behalf of the Appellant.

██████████, RN, BSN, Regional Supervisor, Community Support Services appeared and testified on behalf of the Department's Waiver Agency, ██████████. ██████████.

ISSUE

Did the Department's Waiver Agency properly terminate Appellant's MI Choice Waiver services and deny a reassessment for possible re-enrollment?

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 ██████-year-old woman, (DOB: ██████████), who was enrolled in the MI Choice Waiver Program. (Exhibit A; 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/Care Manager attempted to contact Appellant's primary caregiver for the required 30 day contact and to schedule the required 90 day reassessment. There was no answer after allowing the phone to ring multiple times and there was no voicemail to leave a message. (Exhibit A, p 12).

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4. On [REDACTED], [REDACTED] again attempted to contact Appellant's primary caregiver and again there was no answer and no way to leave a message. Thereafter, a monthly contact letter was sent along with a self addressed stamped envelop to facilitate a return contact. (Exhibit A, p 12; Testimony).
5. On [REDACTED], [REDACTED] again attempted to call Appellant's primary caregiver and this time the listed phone number was no longer in service. (Exhibit A, p 12; Testimony).
6. On [REDACTED], [REDACTED] attempted to call a new phone number supplied by Appellant's home delivered meals drive, it went directly to voice mail and she left a message concerning the importance of her receiving a call back. (Exhibit A, p 12; Testimony).
7. On [REDACTED], [REDACTED] sent Appellant an Adequate Action notice advising that MI Choice Waiver Services were being terminated due to lack of response to phone or mail contacts. (Exhibit A, pp 14-15; Testimony).
8. On [REDACTED], Appellant's daughter/caregiver finally contacted the Appellant's supports coordinator because pay for her services had stopped. (Exhibit A, p 10; Testimony).
9. On [REDACTED], [REDACTED] and [REDACTED], Appellant's RN Case Manager made a home visit with Appellant and her daughter/caregiver in an attempt to complete an assessment to determine Appellant's eligibility for re-enrollment in the MI Choice Waiver program. Due to the fact that the home environment became threatening the Waiver Agents had to leave the home without being able to complete an assessment. (Exhibit A, pp 7-8; Testimony).
10. On [REDACTED], the waiver agency sent an Adequate Action Notice to the Appellant notifying her that the requested assessment for re-enrollment in MI Choice Waiver would not be conducted because the home environment was threatening. (Exhibit A, pp 16-17; Testimony).
11. 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)].

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:

- 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).

* * *

2.3. 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.

MI Choice uses a case status classification system to determine the reassessment and service plan review and the update schedule for program participants. Supports coordinators designate a case status for each participant at the time of service plan development or reassessment using professional judgment in determining participant needs.

Participants classified with active status are those individuals with the most difficult, unstable, or complex needs that require more intensive involvement. Supports coordinators classify participants as active when it is determined that the participant requires a reassessment every 90 days, or more frequently when necessary.

Participants classified with maintenance status are more physically stable and less complex than active cases. Monitoring is required less frequently. At the time of the second reassessment (180 days), the supports coordinator may designate the participant as on maintenance status. Subsequent to the second reassessment, the supports coordinator may designate maintenance status when the participant's situation is currently stable. The participant's level of frailty, risk, or illness determines that the participant requires a reassessment every 180 days or more frequently when necessary.

Supports coordinators may change the case status classification of participants as indicated upon reassessment. Regardless of a defined case status classification, participants may refuse reassessment. The supports coordinator must note this refusal in the case record. However, to maintain program eligibility, the supports coordinator must assess all program participants at least every 180 days. A refusal which prevents a redetermination within the 180-day window is cause for termination from the program. (p. 4).

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The Waiver Agency provides to all participants in the program a copy of the Community Support Services Participant Handbook. Page 5 of the handbook is titled, "Your Responsibilities" and indicates, among other things that participants are required to:

Provide a safe and non-threatening environment for those arranging for and providing services. For example:

* * * *

- Refrain from using profane or offensive language when communicating with your providers/Care Managers.
- Refrain from using verbal or physical abuse toward providers/Care Managers.
- Be considerate to those providing or arranging services by treating others with respect and dignity.
- Follow and actively participate in the agreed upon care plan.

The Waiver Agency provided reliable evidence that when they appeared at Appellant's home on [REDACTED] to assess Appellant for reenrollment, the atmosphere was threatening and hostile. (Exhibit A, p 8; Testimony).

Appellant's daughter/caregiver testified that the problems all started then their phone was disconnected. Appellant's daughter/caregiver indicated that they, therefore, never received any notice from the Waiver Agency that there was a problem until they received the [REDACTED] letter terminating MI Choice Waiver services for lack of contact. Appellant's daughter/caregiver testified that when the Waiver Agency representatives came out on [REDACTED], she was just very upset and was crying. Appellant's daughter/caregiver denied that the environment was hostile or threatening.

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 and deny a reassessment. 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 and denied a reassessment for a possible re-enrollment due to the threatening environment in the home during the home visit for the assessment.

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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 the Appellant's services were terminated. The inability of the Waiver Agent to make contact with the Appellant and her caregiver left the need for services in doubt. The caregiver's failure to make a return contact after being mailed a 30 day contact letter and after a phone message was left requesting contact with the Agency until long after the Adequate Action Notice was sent out terminating the Appellant's MI Choice services, justified the termination of services. The Appellant has failed to prove the waiver agency's actions were not proper when it terminated her MI Choice program services in [REDACTED].

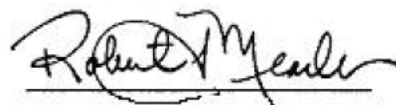
Based upon the threatening home environment experienced by the Waiver Agents in [REDACTED] during a home visit for an assessment to determine Appellant's eligibility for possible re-enrollment in the MI Choice program, the Waiver Agency acted properly when it ended the home visit without conducting the required assessment to determine the Appellant's eligibility for re-enrollment in the MI Choice 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 the Department's Appellant's MI Choice Waiver services and properly denied a reassessment for possible re-enrollment.

IT IS THEREFORE ORDERED that:

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



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

cc:

[REDACTED]

Date Mailed: 4/24/2013

Ely, Gladys
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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.