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:

Docket No. 2013-37671 EDW
Case No.

[redacted],

Appellant
______________________/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant's daughters and co-guardians [redacted] and [redacted] appeared and testified on the Appellant's behalf, as did Appellant's son [redacted] and Appellant's daughter, [redacted].

[redacted], Care Management Department Supervisor and [redacted], Contracts and Quality Specialist appeared and testified for the Waiver Agency, The Information Center, Inc (Waiver Agency of [redacted]).

ISSUE

Did the Waiver Agency act properly by terminating 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. Appellant is an [redacted] year-old female Medicaid beneficiary who is enrolled in the MI Choice Waiver program. Appellant is bed bound, suffers from dementia, and requires extensive, skilled care. (Exhibit A, Testimony).

2. Following a hearing in [redacted], Appellant's self-determination was removed and Appellant was left to choose between three traditional providers. Each provider was to use certified CNA's to care for Appellant because of Appellant's need for highly skilled care. (Exhibit A, Testimony)

3. One of the three providers , informed the Waiver Agency that they were not able to accept Appellant's case because Appellant required services 9 hours per day, 7 days per week and because Appellant's daughter allegedly informed them that all caregivers had to be African American and over the age of 30. (Exhibit A, Attachment A). Appellant's daughter and family vehemently denied this accusation. No-one from testified at the hearing. (Testimony)

4. The second provider, , began providing services but was removed by the Waiver Agency following complaints from Appellant's family regarding the quality of care provided. (Exhibit A, Testimony).

5. Services were then provided by (YPC). On , Appellant's family filed a grievance with the Waiver Agency alleging eight unique complaints about the services YPC was providing. The Waiver Agency made a home visit to investigate the complaints and also met with YPC. (Exhibit A, Attachment B).

6. Before the investigation was complete, on , YPC notified the Waiver Agency that they would no longer provide services to Appellant effective . (Exhibit A, Attachment D, Testimony)

7. On , the Waiver Agency sent the Appellant an Adequate Action Notice stating that YPC would no longer be providing services, effective . The Notice was sent to the wrong address by the Waiver Agency and not retrieved by Appellant's family until . (Exhibit A, Attachment E).

8. On , MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 1).

9. Appellant's request for hearing contained a laundry list of allegations against YPC, as did a separate document sent by Appellant's family prior to the hearing. The list contained allegations that UPC staff were sleeping on the job, refusing to shower Appellant, refusing to wash Appellant's clothes and do dishes, refusing to make Appellant's bed, not feeding Appellant all of her meals, but marking logs as if the meals were given, not putting on Appellant's braces, not changing Appellant's diapers, using improper techniques to feed Appellant, being rude and disrespectful, and leaving Appellant in bed too long. (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 II 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 *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2012, provides in part:

> **<u>SECTION 1 – GENERAL INFORMATION</u>**
>
> 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 their 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.

The sole issue on appeal is whether it was proper for the Waiver Agency to stop Appellant's

services because a traditional provider was not available. Here, there is no question that Appellant is eligible for the Program as she meets all of the eligibility criteria above, is bed-bound, suffers from dementia, and requires around the clock care.

A review of the Medicaid Provider Manual, MI Choice Waiver section, does not reveal any provision that allows for termination of an otherwise eligible participant in the MI Choice Waiver Program simply because a traditional provider is currently unavailable. As such, Appellant is still an active participant in the MI Choice Waiver program and the Waiver Agency must continue to serve her. If the Waiver Agency does not have a provider that can meet Appellant's needs, it needs to work with Appellant and her family to find a provider that can meet those needs. This may involve one of the providers hiring Appellant's previous self-determination workers (who the family seems to be happy with) or transferring Appellant's case to another Waiver Agency that has other traditional providers that can meet Appellant's needs. What the Waiver Agency cannot do is simply stop serving Appellant without endeavoring to find her an appropriate provider.

It bears pointing out that the litany of complaints raised by Appellant's family in the Exhibits presented at the hearing seem quite serious. Now, whether those complaints are legitimate, or were simply the family's way of trying to return their mother's case to self-determination is unknown. However, if the complaints are true, then they should be taken very seriously by the Waiver Agency.

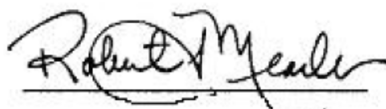
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency must continue to serve Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is MODIFIED.

The Waiver Agency and Appellant's family must work together to find a provider to care for Appellant, or in the alternative, transfer Appellant's case to another Waiver Agency that does have providers who can meet Appellant's needs.



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

cc:

Date Mailed: 4/30/2013

***** 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.