

**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. 2013-6933 EDW
Case No. [REDACTED]

[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]. [REDACTED], Appellant, appeared on his own behalf.

[REDACTED], Senior Social Work Manager, represented the Department's waiver agency, the Detroit Area Agency on Aging. (Waiver Agency or AAA). [REDACTED], Care Manager, Social Worker, appeared as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly administratively close Appellant's case due to a violation of MI Choice Participant Responsibilities?

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 Department contracts with the Detroit AAA to provide MI Choice Waiver services to eligible beneficiaries.
2. Detroit AAA must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a [REDACTED] year-old Medicaid beneficiary who has been a participant in the MI Choice Waiver Program since 1999. Appellant is a bilateral amputee resulting from a gunshot wound. Appellant has a colostomy and Foley catheter. Appellant is totally dependent for transferring, mobility and dressing. (Testimony).
4. The Appellant has no informal supports. (Exhibit F).

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5. Since Appellant's enrollment in the MI Choice Waiver Program in 1999, he has changed providers approximately 15 times as a result of conflicts he has had with his assigned aides. In each instance, the aides complained of verbal abuse, sexually inappropriate behaviors and resistance to care. Appellant's home delivered meal provider complained that Appellant often exposed his genitals. The numerous complaints from Appellant's care providers are noted in logs dating back to [REDACTED]. (Testimony; Exhibit D).
6. On [REDACTED], Care Manager [REDACTED] informed Appellant that he possibly required a level of care not provided through the MI Choice Waiver Program, such as a nursing home. Appellant rejected this recommendation. (Testimony, Exhibit H).
7. At Appellant's 90-day assessment on [REDACTED], Care Manager [REDACTED] offered Appellant self-determination services so that he would be able to pick his own care providers, given the numerous problems Appellant has had with care providers over the years. Appellant rejected this offer. (Testimony; Exhibit F).
8. On [REDACTED], Care Manager [REDACTED] received a fax from [REDACTED], [REDACTED] at [REDACTED], Appellant's care provider. Attached to the fax, [REDACTED] outlined many complaints that she had received about Appellant from her care workers. (Exhibit L).
9. On [REDACTED], Care Manager [REDACTED] received a phone call from [REDACTED] (Appellant's service provider) stating that they could no longer service Appellant due to his inappropriate conduct during care. (Testimony, Exhibit D, [REDACTED] entry).
10. On [REDACTED], Care Manager [REDACTED] conducted a 90-day reassessment with Appellant. (Testimony, Exhibit G). Care Manager [REDACTED] reviewed policies for participation in the MI Choice Waiver Program with Appellant, including Participant Responsibilities. Appellant stated that he understood these policies and signed an acknowledgement. (Testimony; Exhibits B, C and G).
11. On [REDACTED], Care Manager [REDACTED] phoned Appellant and informed him that his case would be closed at the end of the day due to his noncompliance with program rules. (Exhibit D, [REDACTED] 3: 40 pm entry). Care Manager [REDACTED] referred Appellant to [REDACTED] service organization and phoned Appellant's doctor to advise that Appellant's case would be closed. Care Manager [REDACTED] asked that the doctor order skilled services in the home for Appellant. (Exhibit D, [REDACTED] 2 3:50 pm entry).
12. On [REDACTED], Care Manager [REDACTED] mailed Appellant an Advanced Action Notice indicating that Appellant's case was being closed due to Appellant's failure to comply with his responsibilities within the Program.

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The Notice contained Appellant's rights to a Medicaid fair hearing. (Exhibit I) These documents were resent to Appellant via certified mail on ██████████ after Appellant claimed that he never received the copies sent via regular mail. (Testimony, Exhibit I).

13. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the Appellant. (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 has been 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 (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case The Detroit AAA, 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)*

Appellant's Care Manager reviewed the Exhibits discussed above in the Findings of Fact. Appellant's Care Manager indicated that she did her best to make sure Appellant was provided services, but his actions made it impossible. Appellant's Care Manager testified that she took over as Care Manager for Appellant in ██████████ and that she did not realize at that time how far back the difficulties with Appellant went.

Appellant testified that he asked that Care Manager ██████████ be removed from his case as soon as she began in ██████████ because she was very hostile. Appellant asserted that everything contained in the Exhibits was fabricated and inadmissible. Appellant indicated that he was never given a proper Request for Hearing form and that he had to write out the request himself and mail it in. Appellant indicated that he called the Waiver Agency 20-30 times before they finally mailed the closure documents to him via ██████████

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█████ Appellant testified that he is a good man and has been very nice to his aids over the years. Appellant asserted that he could not have lasted █████ years in the program if he was doing all of the bad things claimed by the Waiver Agency. With regard to the allegation that he exposed his genitals to the █████ on █████ worker, Appellant stated that he just happened to be sleeping naked on his living room floor with the door open when the worker arrived. Appellant wondered why he would expose himself to his aid workers when he is totally dependent on their care and they see him naked all the time. Appellant admitted that he has requested that certain aid workers be removed from his case over the years because they were giving him attitude. Appellant testified that one of the workers robbed him. (See Exhibit J) Appellant also reported that Care Manager █████ purposely closed his case on a Friday afternoon so that he would be without services for the entire weekend.


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.

Here, it is clear that Appellant failed to provide a safe and non-threatening environment for those arranging for and providing services. The testimony and exhibits provided by the Waiver Agency show an overwhelming amount of evidence that Appellant has used profane and offensive language, been verbally abusive to care providers and has not treated his workers with respect and dignity. Appellant's assertion that the allegations against him were made up by Care Manager █████ is not persuasive given that many of the complaints found in Exhibit D happened years before █████ became Appellant's Care Manager. Appellant's assertion that these allegations are inadmissible is inaccurate. Evidence of a type commonly relied upon by reasonably prudent persons in the ordinary course of business is admissible in an administrative hearing. MCL 24.275. The undersigned interprets that section of the Administrative Procedures Act to include hearsay of the type included in the Waiver Agency's exhibits. The sheer volume of the allegations is enough to substantiate their reliability.


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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 administratively closed Appellant's case due to multiple violations of MI Choice Participant Responsibilities.

IT IS THEREFORE ORDERED that:

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

/s/

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

cc:



Date Mailed: January 29, 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.