

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2013-14907 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 ██████████ appeared and testified on Appellant's behalf. ██████████, Waiver Program Director, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the Tri-County Office on Aging ("Waiver Agency" or "Tri-County"). ██████████ from the Waiver Agency were also present during the hearing.

ISSUE

Did the Waiver Agency properly deny Appellant's request for 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. Tri-County is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for the provision of MI Choice waiver services.
2. Appellant applied for MI Choice waiver services in ██████████. At that time, the program was at capacity and Appellant was placed on a waiting list. (Respondent's Exhibit A, pages 3-9; Uncontested testimony at hearing).
3. In ██████████, Appellant was moved to a priority level on the wait list and was subsequently assessed for services. (Uncontested testimony at hearing).

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4. As part of that assessment, Appellant's financial information was sent to the Michigan Department of Human Services (DHS). (Testimony of [REDACTED])
5. Subsequently, a staff member from DHS notified Tri-county staff that Appellant was financially ineligible for the waiver program. (Testimony of [REDACTED])
6. Tri-County sent Appellant written notification of the denial of services on [REDACTED]. (Respondent's Exhibit A, page 31).
7. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received a request for hearing filed on Appellant's behalf.

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.

The 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 Tri-County, 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

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[Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. [42 CFR 430.25(c)(2).]

However, while regional agencies such as Tri-County function as the Department's administrative agency, determinations regarding financial eligibility for the MI Choice Waiver Program are made by DHS:

2.1 FINANCIAL ELIGIBILITY

Medicaid reimbursement for MI Choice services requires a determination of Medicaid financial eligibility for the applicant by the Michigan Department of Human Services (MDHS). As a provision of the waiver, MI Choice applicants benefit from an enhanced financial eligibility standard compared to basic Medicaid eligibility. Specifically, MI Choice is furnished to participants in the special home and community-based group under 42 CFR §435.217 with a special income level equal to 300% of the SSI Federal Benefit Rate. Medicaid eligibility rules stipulate that participants are not allowed to spend down to achieve an enhanced financial eligibility standard. [Medicaid Provider Manual, MI Choice Waiver Chapter, October 1, 2012, page 1.]

Given that policy, Tri-County must rely on the determination of financial eligibility made by DHS and, in this case, it properly ended services after DHS made the determination that Appellant was financially ineligible.

Appellant's primary issue in this case is not properly before this court. Appellant's representative stated that Appellant wished to dispute the determination of financial ineligibility. It was explained that DHS has jurisdiction over eligibility issues, not the Department of Community Health or the Waiver Agency. Appellant has been advised to file a hearing request in the appropriate forum so that a separate hearing can be scheduled to address the eligibility determination with DHS. Appellant's representative indicated that he will file such an appeal.

Given the understandable confusion regarding where to file the appeal and the fact that Appellant's request for hearing clearly included the issue of financial eligibility, Appellant's 90-day time period for requesting a hearing with DHS should be extended to 90 days from the date of this hearing.


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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 Waiver Agency properly denied Appellant's request for services through the MI Choice waiver program.

IT IS THEREFORE ORDERED that:

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

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

cc:



Date Mailed: February 22, 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.