

**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. 2013-33528 EDW
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on his own behalf. Appellant's witness was ██████████, Transition Coordinator, ██████████, ██████████, Waiver Director, appeared on behalf of ██████████, ██████████, the Department's MI Choice Program Waiver Agency ██████████ or Waiver Agency). ██████████, R.N., Supports Coordinator, and ██████████, Social Worker, Supports Coordinator, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly recommend that Appellant transition from a Skilled Nursing Facility (SNF) to an Assisted Living Facility (ALF) due to a determination that it would not be safe for Appellant to immediately transition to his own home?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year old male, born ████████████████████. (Exhibit 1; Testimony)
2. Appellant was in a SNF following a stroke. (Testimony)
3. Appellant lives in a three story home. Appellant's bedroom is on the main level. (Exhibit A; p 3; Testimony)
4. Appellant was assessed for the MI Choice Waiver Program on ██████████ and was determined to be eligible for the Program both medically and financially. At the time of his assessment, Appellant had continued weakness

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and decreased coordination, continued neurological deficits and would have required moderate assist from two persons to get in and out of his home. (Exhibit A, p 1; Testimony)

5. On [REDACTED], an Occupational Therapist (OT) conducted a home safety assessment at Appellant's home. The OT concluded that Appellant's home was an unsafe environment for Appellant to transition to given the state of his home and his current limitations. The OT concluded that the home was unsafe because of the massive amounts of debris and clutter in the home as well as the fact that Appellant is very impulsive and easily distracted due to his neurological deficits. (Exhibit A, pp 3-5; Testimony)
6. On [REDACTED], a second OT conducted an assessment and also determined that Appellant's home was unsafe for him to return to due to the debris and clutter in the home. (Exhibit A, p 6; Testimony)
7. On [REDACTED], the Waiver Agency sent Appellant an Adequate Action Notice informing him that his request for waiver services was denied. The notice included Appellant's rights to a Medicaid fair hearing. (Exhibit 1, p 2)
8. Appellant's request for a formal, administrative hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (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 is claiming eligibility for 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 Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case, the Region 14 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

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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)

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as “medical assistance” under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b))

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

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:

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- 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).

* * *

The Waiver Agency also 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.

The Waiver Agency's social worker testified that she and an R.N., supports coordinator assessed Appellant for the MI Choice Waiver Program on [REDACTED]. The Waiver Agency's social worker testified that they determined that Appellant was both medically and financially eligible for the Program, so they scheduled a home safety assessment of Appellant's home. The Waiver Agency's social worker testified that at the time of the assessment, Appellant had very limited informal supports, required moderate assist of two persons to get in and out of his home, and continued to have weakness and decreased coordination. The Waiver Agency's social worker testified that the OT completed her report on [REDACTED] and determined that Appellant's home would be an unsafe environment for him to transition to given his current limits. The Waiver Agency's social worker testified that she and the R.N. made a plan for Appellant to transition to an ALF as a step down before returning to his home.

The Waiver Agency's R.N. supports coordinator testified that her main concern with Appellant returning to his home was his impulsivity and his admission that he did not like to follow directions. The Waiver Agency's R.N. supports coordinator indicated that she learned from the SNF staff that Appellant had refused some therapy while in the SNF. The Waiver Agency's R.N. supports coordinator indicated that she was concerned because Appellant indicated that he would go to the basement (approximately 12-14 steps) to work on his guitars when he got home. The Waiver Agency's R.N. supports coordinator testified

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that Appellant then decided to return home without waiver services; hence the Waiver Agency sent him an Adequate Action Notice.

Appellant testified that he never refused therapy while in the SNF and that refusing therapy would have been contrary to his goal of getting out of the facility and back home. Appellant indicated that things have been going well since he got home and that he arranged for the clutter and debris to be cleaned up before he got home.

Appellant's witness testified that she has known Appellant since even before his stroke and his time in the SNF. Appellant's witness indicated that when she asked Appellant about informal supports, he was able to immediately list 8 people off the top of his head who could help him. Appellant's witness indicated that it is not unusual for a person's home to have clutter and debris before the person returns home from a SNF and that the Waiver Agency can assist with the cleanup. In this case, Appellant's witness indicated that Appellant simply called his daughter who went to the home and cleaned it up prior to Appellant's transition there from the SNF. Appellant's witness testified that Appellant has had no problem with the safekeeping of his medications since he got home (one of the concerns of the OT), that he keeps the medications on a tray on the floor for ease of access and that there is no safety concern with this arrangement because there are no children or pets in the home. Appellant's witness testified that the program she works for had to fix the stairs going into Appellant's home and that they provided him with a PERS unit in case of emergency. Appellant's witness indicated that it was very important to Appellant to be able to go down to the basement to work on his guitars. Appellant's witness indicated that she felt the Waiver Agency simply did not continue with enough questions when assessing Appellant to properly determine whether there was a risk for him to transition to his home.

Based on the information available to the Waiver Agency at the time of its recommendation, the Waiver Agency properly recommended that Appellant transition to an ALF. Even though Appellant was medically and financially eligible for the MI Choice Waiver Program, the Waiver Agency must assess the Appellant's home to make sure it is safe for him to return to and safe for workers to provide services in. In this case, it was determined by two separate OT's that Appellant's home was unsafe for him to return to. The Waiver Agency did not directly deny Appellant services; it simply recommended that Appellant transfer to an ALF while his home was made safe for his return. Appellant was free to disregard this recommendation, and he did so. However, the fact that Appellant was able to safely transition to his home does not mean that the recommendation by the Waiver Agency to have Appellant step down through an ALF was improper at the time it was made.

If Appellant would like to receive MI Choice Waiver services in the future, he can reapply for those services at any time. However, based on the evidence the Waiver Agency had at the time it recommended Appellant transition to an ALF, that decision was proper.

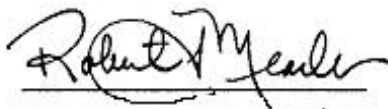
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The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Waiver Agency properly denied Appellant services when he disregarded their recommendation to transition to an ALF as a step down before returning home.

IT IS THEREFORE ORDERED that:

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



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

cc:

Date Signed: 7/25/2013

Date Mailed: 7/25/2013

***** 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.