

**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. 2013-44594 CMH  
Case No. 75711243

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 ██████████. ██████████, Appellant's guardian, appeared and testified on Appellant's behalf. Appellant's witnesses were ██████████, Social Worker, Care Manager at HHS Health Options, a MI Choice Waiver Program agency, and ██████████, Appellant's sister and caregiver.

██████████, Fair Hearings Officer, represented ██████████, the mental health authority for ██████████ (CMH or ██████████). ██████████, Supports Coordinator, ██████████, appeared as a witness for ██████████.

**ISSUE**

Did CMH properly terminate Appellant's Supports Coordination and Community Living Supports services because Appellant was receiving the same 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. Appellant is a ██████ year-old Medicaid beneficiary, born ██████████. (Exhibit C, p 1)
2. ██████████ is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area. (Testimony)
3. Appellant is diagnosed with moderate mental retardation, multiple sclerosis, emphysema, and COPD. (Testimony)

**Docket No. 2013-44594 CMH**  
**Hearing Decision & Order**

4. Appellant resides in the family home with her guardians (Exhibit E, p 1; Testimony)
5. Appellant and her family participated in a person-centered planning process beginning on [REDACTED]. The resulting individual plan of service (IPOS) included 72 15-minute units of Supports Coordination and 66 15-minute units per week of Community Living Supports. (Exhibit E, p 4; Testimony)
6. In [REDACTED] it was discovered that Appellant was also receiving Supports Coordination and Community Living Supports through [REDACTED], a MI Choice Waiver Agency. (Testimony)
7. On [REDACTED] [REDACTED] sent Appellant an Advance Notice of Action informing her that services were terminated effective [REDACTED] because she was receiving the same services through the MI Choice Waiver Program. The Advance Notice of Action informed Appellant of her right to a Medicaid Fair Hearing. (Exhibit C).
8. On [REDACTED], Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. (Exhibit 1)
9. Appellant's services have continued during the pending appeal. (Testimony)

**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.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

*42 CFR 430.0*

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in

conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

*42 CFR 430.10*

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent she finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver. CMH contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services for which they are eligible.

The Medicaid Provider manual provides, in pertinent part:

## **2.1 MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES**

Mental health and developmental disabilities services (state plan, HSW, and additional/B3) must be:

\* \* \* \*

- Coordinated with other community agencies (including, but not limited to, Medicaid Health Plans [MHPs], family courts, local health departments [LHDs], MIChoice waiver providers, school-based services providers, and the county Department of Human Services [DHS] offices).

\* \* \* \*

*Medicaid Provider Manual  
Mental Health/Substance Abuse Section  
July 1, 2013, p 8*

## **2.3 NEED FOR MI CHOICE SERVICES**

An applicant cannot be enrolled in MI Choice if their 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.

### **4.1.I. COMMUNITY LIVING SUPPORTS**

CLS services cannot be authorized in circumstances where there would be a duplication of services available elsewhere or under the State Plan.

*Medicaid Provider Manual  
MI Choice Waiver Section  
July 1, 2013, pp 3, 13*

[REDACTED] witness testified that [REDACTED] must follow the guidance found in the Medicaid Provider Manual (MPM) and that the MPM indicates that services must not be duplicated. [REDACTED] witness testified that mental health providers must coordinate benefits with a variety of community resources, including the MI Choice Waiver program. [REDACTED] witness indicated that part of coordinating benefits is to ensure that Medicaid is the payer of last resort and that there is no duplication of services between the programs and services being coordinated. [REDACTED] witness indicated that because the MPM indicates that an applicant cannot be enrolled in the MI Choice Waiver Program if his or her needs can be met through other State Plan resources, the fact that Appellant is enrolled in the MI Choice Waiver Program means that Appellant's needs cannot be met through [REDACTED] (a State Plan resource). [REDACTED] witness indicated that upon learning that Appellant was also receiving Supports Coordination and CLS services through the MI Choice Waiver Program, it had to terminate Appellant's services.

Appellant's guardian testified that Appellant has been receiving services through [REDACTED] for over [REDACTED] years and that she very much looks forward to participating in the program she is involved in.

Appellant's witness testified that she hoped that Appellant would be able to continue to attend the day program through [REDACTED] (a [REDACTED] provider) because that program is designed specifically for people with developmental disabilities, like Appellant. Appellant's witness testified that the alternative program through the MI Choice Waiver Program is an

██████████  
**Docket No. 2013-44594 CMH**  
**Hearing Decision & Order**

adult day care program designed for persons with dementia. Appellant's witness testified that she had hoped that the parties would be able to work something out so that Appellant could continue in the program.

Appellant's sister testified that her biggest concern is that Appellant has been attending the day program through ██████████ for a long time. Appellant's sister testified that the family also used to receive respite services through ██████████

Based on the competent and material evidence on the whole record, the Appellant has failed to prove, by a preponderance of evidence, that the termination of her services by ██████████ was improper. The evidence demonstrates clearly that Appellant was receiving duplicate services, something not allowed under Medicaid policy. The undersigned agrees with ██████████'s position that the fact that Appellant is receiving services through the MI Choice Waiver Program does demonstrate that Appellant's needs cannot be met solely through ██████████. If there is a service that Appellant is eligible for and that is not covered through the MI Choice Waiver Program, then ██████████ could provide that service, so long as it was coordinated through the MI Choice Waiver Program.

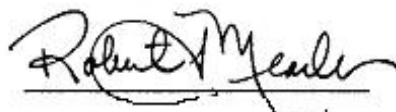
**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

██████████ properly terminated Appellant's Supports Coordination and Community Living Supports services because Appellant was receiving the same services through the MI Choice Waiver Program.

**IT IS THEREFORE ORDERED** that:

The CMH's decision is AFFIRMED.



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

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cc: ██████████  
██████████  
██████████

**Docket No. 2013-44594 CMH**  
**Hearing Decision & Order**

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.