

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. 2013-55131 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.*, and upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Attorney ██████████ appeared on Appellant's behalf. Appellant and her daughter ██████████ were also present during the hearing. ██████████, Program Director, appeared and testified on behalf of the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency" or "A&D"). ██████████, hearing representative, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's 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. A&D 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 has been receiving MI Choice waiver services through A&D for approximately four years.
3. On ██████████, the Michigan Department of Human Services (DHS) terminated Appellant's Medicaid coverage.
4. Appellant never received notice of that termination.
5. Appellant continued to receive services through the Waiver Agency after ██████████, but the Waiver Agency was not reimbursed for the services it provided due to the termination by DHS.

Docket No. 2013-55131 EDW
Decision and Order

6. On or about [REDACTED], the Waiver Agency received notice of the Medicaid termination and the fact that Appellant was not financially eligible for the waiver program.
7. A representative from the Waiver Agency then contacted Appellant about the termination. According to Appellant, that was the first time she was notified of any termination.
8. Appellant, with advice from the Waiver Agency, attempted to lower her assets over the next few weeks and have her Medicaid reinstated, but she was unsuccessful.
9. On [REDACTED], the Waiver Agency sent Appellant written notification that her waiver services were being terminated.
10. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received a request for hearing filed by Appellant.

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 A&D, 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).]

* * *

Docket No. 2013-55131 EDW
Decision and Order

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).]

Regarding eligibility for the waiver program, the applicable version of the Michigan Medicaid Provider Manual (MPM) states in part:

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.

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

Docket No. 2013-55131 EDW
Decision and Order

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.

[MPM, April 1, 2013 version, MI Choice Waiver Chapter, page 1.]

Given that policy, the Waiver Agency 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 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 regarding her Medicaid eligibility. It was explained that DHS has jurisdiction over eligibility issues, not the Department of Community Health or the Waiver Agency.

Appellant's representative noted that Appellant never received notice of any determination from DHS and therefore never had an opportunity to appeal that decision. However, while this Administrative Law Judge sympathizes with Appellant, any lack of notice is also an issue to take up with DHS.

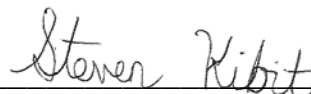
Appellant's representative also argues that, given that Appellant's financial circumstances and medical needs have not changed since she began receiving services, it is unfair to terminate those services now and the Waiver Agency should be estopped from doing so. However, this Administrative Law Judge lacks equitable jurisdiction and is bound by the applicable policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly terminated Appellant's services through the MI Choice waiver program.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is **AFFIRMED**.



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

**Docket No. 2013-55131 EDW
Decision and Order**

Date Signed: 8/20/2013

Date Mailed: 8/21/2013

cc:



***** 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.