

**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. 2013-61794 EDW

██████████

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon a Request for Hearing filed by Appellant.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████ Care Management Department Supervisor, appeared and testified on behalf of the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency" or "██████████").

ISSUE

Did the Waiver Agency properly terminate Appellant's homemaking services through the MI Choice Waiver Program?¹

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 ██████████ is a contract agent of the Department and the agency responsible for the provision of Appellant's MI Choice services.
2. Appellant has been receiving ██████████ hours of homemaking services through the Waiver Agency. (Respondent's Exhibit D, page 1).
3. Appellant's case was last reassessed on ██████████ (Respondent's Exhibit H, page 2).
4. On ██████████, the Waiver Agency began trying to schedule a reassessment of Appellant's waiver services. (Respondent's Exhibit H, page 2).

¹ Appellant's Request for Hearing also references a termination of her home delivered meals, but that request and Appellant's testimony during the hearing clearly provide that Appellant is not appealing that termination.

5. Appellant informed the Waiver Agency that, due to the fact that she receives dialysis three days a week and the effects of that treatment, she could not complete any reassessment until at least sometime in August. (Testimony of Appellant; Respondent's Exhibit H, pages 1-2).
6. The Waiver Agency tried to accommodate Appellant by offering to schedule the reassessment, which would take approximately an hour to ██████ minutes, at her convenience. (Testimony of Appellant; Respondent's Exhibit H, pages 1-2).
7. Appellant refused all requests to schedule a reassessment. (Testimony of Appellant; Respondent's Exhibit H, page 1).
8. On ██████ the Waiver Agency sent Appellant a letter stating that her case would be closed on ██████ unless her reassessment was completed before that date. (Respondent's Exhibit C, page 1).
9. Appellant continue to refuse all requests to schedule a reassessment. (Testimony of Appellant; Respondent's Exhibit H, page 1).
10. On ██████, the Waiver Agency sent Appellant an Advance Action Notice stating that her homemaking services would be terminated effective ██████ due to Appellant's failure to make herself available for a reassessment. (Respondent's Exhibit D, page 1).
11. On ██████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed on Appellant. (Petitioner's Exhibit 1, pages 1-8).

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.

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

Types of services that may be offered include:

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR 440.180(b)

Here, Appellant was receiving homemaking services and the Waiver Agency was trying to schedule a reassessment of her services. With respect to reassessment of waiver services, the Michigan Medicaid Provider Manual (MPM) states:

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home.

MI Choice uses a case status classification system to determine the reassessment and service plan review and the update schedule for program participants. Supports coordinators designate a case status for each participant at the time of service plan development or reassessment using professional judgment in determining participant needs.

Participants classified with active status are those individuals with the most difficult, unstable, or complex needs that require more intensive involvement. Supports coordinators classify participants as active when it is determined that the participant requires a reassessment every 90 days, or more frequently when necessary.

Participants classified with maintenance status are more physically stable and less complex than active cases. Monitoring is required less frequently. At the time of the second reassessment (180 days), the supports coordinator may designate the participant as on maintenance status. Subsequent to the second reassessment, the supports coordinator may designate maintenance status when the participant's situation is currently stable. The participant's level of frailty, risk, or illness determines that the participant requires a reassessment every 180 days or more frequently when necessary.

Supports coordinators may change the case status classification of participants as indicated upon reassessment. **Regardless of a defined case status**

classification, participants may refuse reassessment. The supports coordinator must note this refusal in the case record. However, to maintain program eligibility, the supports coordinator must assess all program participants at least every 180 days. A refusal which prevents a redetermination within the 180-day window is cause for termination from the program.

*MPM, July 1, 2013 version
MI Choice Waiver Chapter, page 4
(Emphasis added by ALJ)*

Here, it is undisputed that a reassessment has not been conducted despite all attempts by the Waiver Agency to schedule one as Appellant has simply refused to make arrangements. Moreover, while this Administrative Law Judge appreciates how draining the dialysis treatments Appellant receives three times a week can be, it appears implausible that Appellant could not find a single ninety minute window in the entire month of July during which a reassessment could be conducted.

Nevertheless, the termination of services in this case is premature and improper. While the Waiver Agency has classified Appellant with an active status and such a classification requires a reassessment every █ days, the policy highlighted above clearly provides that “[r]egardless of a defined case status classification, participants may refuse reassessment.” See MPM, █ version MI Choice Waiver Chapter, page 4. Moreover, when such a refusal occurs, the Waiver Agency must attempt to reassess the participant within █ days of the last reassessment and it is only a “refusal which prevents a redetermination within the █-day window” that is “cause for termination from the program.” See MPM, █ version, MI Choice Waiver Chapter, page 4.

The Waiver Agency terminated Appellant because it could not reassess her within █ days of her last reassessment. Given the above policy, that termination was improper as it is only a refusal that prevents a reassessment within █ days that is a cause for termination.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency improperly decided to terminate Appellant’s services.

[REDACTED]
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Decision and Order

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision to terminate Appellant's homemaking services is **REVERSED**.

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc:

[REDACTED]

***** 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.