

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-66136 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 nephew, authorized hearing representative, appeared and testified on Appellant's behalf. ██████████, Clinical Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████). ██████████, APW and ██████████, APS appeared on behalf of the Department of Human Services (DHS).

ISSUES

- ISSUE 1) Did the Waiver Agency properly terminate Appellant's services through the MI Choice Waiver Program?
- ISSUE 2) Is there jurisdiction for the Department of Community Health (DCH) to hold an administrative hearing on a Department of Human Services (DHS) eligibility determination?

FINDINGS OF FACT

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

1. AAA 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 previously been accepted into the MI Choice waiver program through AAA and approved for services.

3. AAA conducts a yearly redetermination of Appellant's case in July each year. As part of Appellant's yearly redetermination, in ██████████, AAA reviewed Appellant's waiver case.
4. At the time of review, the AAA had information from DHS that Appellant was financially ineligible for the MA program and that his MA would close ██████████.
5. AAA sent Appellant written notification of the termination of services which would take effect ██████████. The DHS stopped payments due to financial ineligibility on ██████████. Each action was a separate negative action between separate administrative agencies with the State of Michigan.
6. On ██████████, the Michigan Administrative Hearings System (MAHS) received a request for hearing filed on Appellant's behalf. (Exhibit 2, page 1).
7. Appellant was forced to move out of the assisted living facility due to nonpayment.
8. Due to COLA increases each year of approximately \$10.00, DHS closes MA due to excess income, triggering a subsequent closure of the waiver case until the State of Michigan increases the income eligibility cap effective January 1 each year.

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 AAA, 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. [42 CFR 430.25(c)(2).]

However, while regional agencies such as AAA 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, July 1, 2012, page 1.]

Given that policy, AAA 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.

Each and every year, due to COLA increases, Appellant becomes ineligible due to excess income for MA (a program administered by the DHS). This in turn requires the AAA to close the waiver case, pursuant to the above cited authority that requires a recipient to be MA eligible in order to have a waiver case (a spend down is not classified as MA eligible). Unfortunately for Appellant, this pattern triggering closure for a few

months at a time repeatedly happens each year.

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.

DECISION AND ORDER

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

Issue 1) That the Waiver Agency properly terminated Appellant's services through the MI Choice waiver program.

On this issue, the DCH decision is partially affirmed.

Issue 2) There is no jurisdiction for this forum, a DCH administrative hearing, to review a decision made by the DHS.

On this issue, Appellant's hearing request will be forwarded to MAHS DHS for scheduling. MAHS is on notice that Appellant may have filed a request for an administrative hearing with DHS on this issue; Appellant's new hearing with DHS shall relate back to the date of the original hearing request: [REDACTED].

/s/

Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

JS/sb

[REDACTED]
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Decision and Order

cc:

[REDACTED]

Date Signed: January 8, 2014

Date Mailed: January 9, 2014

***** 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.