

**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:

██████████ rbi,

Appellant

Docket No. 14-008253 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, appeared on his own behalf. ██████████ appeared as a witness on behalf of Appellant.

The following individuals appeared as witnesses on behalf of the Departments subcontracting Waiver Agency, ██████████, of ██████████ Michigan-██████████, ██████████, Director of Care Management Services; ██████████, RN, Support Coordinator; ██████████, Case Manager/Social Worker.

ISSUE

Did the Waiver Agency properly administratively close Appellant's case due to a violation of MI Choice Participant Responsibilities?

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 Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
2. The Waiver Agency must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. Appellant is a ██████████ year-old male Medicaid beneficiary who has been a participant in the MI Choice Waiver Program since ██████████. Appellant has a history of a stroke, with weakness on his left side, and with resulting speech issues. (Exhibit A-F)
4. On ██████████, the Waiver Agency mailed Appellant an Advanced Action Notice indicating that Appellant's case was being closed due to

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Appellant's failure to comply with his responsibilities within the Program. The Notice contained Appellant's rights to a Medicaid fair hearing. (Exhibit I-1)

5. On ██████████, the Waiver Agency received a complaint from the home care agency worker stating that Appellant was calling the worker a "hooker" in public and watching pornography while she was providing care. (Exhibits A- C)
6. The Waiver Agency discussed the inappropriateness of Appellant's behavior and violation of his responsibilities discussed with Appellant during a home visit on ██████████. (Exhibits C-D) During the home visit Appellant denied the accusations and requested a new home help provider agency.
7. On ██████████ a new home help agency began providing services.
8. On ██████████ the Waiver Agency was informed by the new home help agency of 2 incidents of abuse by Appellant to the personal care workers, involving inappropriate language, propositioning a worker for sexual activity, and physically assaulting the worker. The Waiver Agency obtained a copy of the police report verifying the incidents. (Exhibit F)
9. At the administrative hearing, Appellant alleged that the home help aide stole from him. Appellant did not file a police report.
10. After issuing its Negative Action Notice of ██████████ for closure, the Waiver Agency made a HHS referral on behalf of Appellant.
11. On ██████████, the Michigan Administrative Hearing System received a request for hearing from the 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.

This Appellant has been receiving 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 Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case The Information Center, functions as the Department's administrative agency.

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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)*

In this case, The Waiver Agency 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. For example:

* * * *

- Refrain from using profane or offensive language when communicating with your providers/Care Managers.
- Refrain from using verbal or physical abuse toward providers/Care Managers.
- Be considerate to those providing or arranging services by treating others with respect and dignity.
- Follow and actively participate in the agreed upon care plan.

Here, it is clear that Appellant failed to provide a safe and non-threatening environment for those arranging for and providing services. The testimony and exhibits provided by the Waiver Agency show a pattern of repeated violations by Appellant of his rights and responsibilities as outlined in the MI Choice Waiver Participant Handbook. The evidence indicates that Appellant has not treated his workers with respect and dignity. Appellant's assertion that the allegations against him were made up. However, the caregiver in this matter did in fact file a police report. (See Exhibit F) Appellant contends that the worker stole from him. However, Appellant had no evidence of the same. Nor did Appellant file a police report.

Appellant has the burden of proof to show that the action(s) taken by the Waiver Agency were not consistent with policy and procedure, and/or contrary to law. Appellant has

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failed to meet his burden. As the evidence herein supports the Waiver Agency's actions under federal and state law, this ALJ must uphold the closure.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly administratively closed Appellant's case due to violations of MI Choice Participant Responsibilities.

IT IS THEREFORE ORDERED that:

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

_____/s/_____
Janice Spodarek
Administrative Law Judge
for Nick Lyons, Director
Michigan Department of Community Health

JS/■

cc: ■■■■■
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Date Signed: ■■■■■■

Date Mailed: ■■■■■■

***** 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.