

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 14-012533 HHS

██████████

██████████

██████████

Appellant

_____ /

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 and testified on her own behalf. ██████████, Appeals Review Officer; ██████████, Adult Services worker (ADW); and ██████████, Adult Services Supervisor, appeared as witnesses for the Department of Community Health (DCH or the Department).

ISSUE

Did the Department properly terminate Appellant's Home Help Services (HHS) effective ██████████?

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 HHS recipient.
2. Appellant has been diagnosed multiple sclerosis and is bedridden.
3. Appellant was approved for HHS services from ██████████ forward.
4. On ██████████, Appellant was accepted into the Medicaid Waiver Program.
5. On ██████████ the Department of Human Services ADW sent Appellant an Adequate Negative Action Notice informing her that HHS would be terminated effective ██████████ due to her acceptance into the Medicaid Waiver Program.

6. On [REDACTED] appellant filed a request for hearing, stating that her HHS caregiver had been working from [REDACTED] through [REDACTED] and had not been paid.

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.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

ADULT SERVICES AUTHORIZED PAYMENTS (ASAP)

The Adult Services Authorized Payments (ASAP) is the Michigan Department of Community Health payment system that processes adult services authorizations. The adult services specialist enters the payment authorizations using the **Payments** module of the **ASCAP** system.

No payment can be made unless the provider has been enrolled in Bridges. Adult foster care, homes for the aged and home help agency providers must also be registered with Vendor Registration; see ASM 136, Agency Providers.

Home help services payments to providers must be:

- Authorized for a specific period of time and payment amount. The task is determined by the comprehensive assessment in ASCAP and will automatically include tasks that are a level three or higher.
- Authorized **only** to the person or agency actually providing the hands-on services. ASM 140, page 1.

The MI Choice waiver program provides home and community-based services for individuals:

- Aged (65 and over) and disabled persons who meet the MA nursing facility level of care.

- Who require at least one MI Choice service on a continual basis.
- Meet Medicaid financial eligibility criteria; see BEM 106.

The Michigan Department of Community Health, Home and Community Based Services Section, administers the waiver through contracts with organized health care delivery systems, commonly referred to as waiver agencies. For a list of the waiver agencies see **Exhibit I in BEM 106**.

Services covered under the waiver include:

- Homemaker.
- Respite care (in-home and out-of-home).
- Adult day health (or adult day care).
- Personal emergency response systems.
- Private duty nursing.
- Personal care waiver.
- Non-medical transportation.
- Specialized medical equipment and supplies.
- Chore services.
- Home delivered meals.
- Nursing facility transition.
- Environmental accessibility adaptations.
- Community living supports.
- Counseling services.
- Fiscal intermediary services.
- Goods and services.
- Residential services.
- Training.

The Medicaid State Plan program for personal care services is home help. MA recipients seeking personal care services must first apply for home help.

MI Choice participants **cannot** receive services from both the **home help program** and the **waiver** as this is a duplication of Medicaid services. The level of care (LOC) code for the MI-Choice waiver is **22**. ASM 125, pages 3-4.

Appellant testified on the record that she was not told that her services provider would not be paid continuously when she was transferred from one Medicaid program to another. The services provider worked from ██████████ without pay until she was enrolled as a MI Choice Waiver provider. It is not her fault that the programs changed and her provider should receive payment for the work that she has performed.

This Administrative Law Judge finds that the Department representative provided detailed, credible evidence and testimony that she followed Department policy and procedure when determining that Appellant's HHS would be cancelled once Appellant was determined eligible for the MI Choice Waiver Program.

The Appellant's grievance centers on dissatisfaction with the department's current policy. The Appellant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written Delegation of Authority signed by the Michigan Department of Community Health Director, [REDACTED], which states:

Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulation, or overrule or make exceptions to Department policy. ([REDACTED])

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co v Baker*, 295 Mich 237; 294 NW168 (1940).

This Administrative Law Judge does not possess equitable powers and, therefore, cannot award benefits or payments as a matter of fairness. Certain criteria have to be met and specific events have to occur before HHS payments can be authorized. In this case, safeguards have been put into place to prevent payment for home help services once a client has been accepted into the Medicaid Waiver program. The assessment process for the MI Choice Waiver Program was not completed and the Appellant's provider was not enrolled as a provider in the MI Choice Waiver program until [REDACTED]. Consequently, any HHS services provided between [REDACTED] and [REDACTED] were unauthorized by either program and the Department cannot pay for them.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that effective [REDACTED] Appellant's HHS case was properly cancelled because she was approved for the Medicaid Waiver Program. The Department's actions must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly determined the Appellant's HHS case was properly terminated on [REDACTED] due to her acceptance into the Medicaid Waiver program, based on the available information contained in the record.

[REDACTED]
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IT IS THEREFORE ORDERED THAT:

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

Landis Y. Lain

Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

LYL/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.