

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM**  
**FOR THE DEPARTMENT OF COMMUNITY HEALTH**  
P.O. Box 30763, Lansing, MI 48909  
Phone: (517) 335-3997; Fax: (517) 373-4147

**IN THE MATTER OF:**

**Docket No.: 14-015579 EDW**

██████████  
  
██████████  
  
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.*, and upon a request for a hearing filed on Appellant's behalf.

After due notice, a hearing was held on ██████████, ██████████ appeared and testified on Appellant's behalf. ██████████, Appellant's daughter and durable power of attorney, also testified as witness for Appellant. ██████████, Manager of ██████████, appeared and testified on behalf of the Michigan Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "██████"). ██████████, registered nurse/supports coordinator, 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. ██████████ is a contract agent of the Department of Community Health ("DCH") and is responsible for the provision of MI Choice waiver services.
2. Appellant was enrolled in the waiver program and receiving services through ██████████. (Testimony of ██████████).
3. On ██████████, the Waiver Agency discovered that the Michigan Department of Human Services ("DHS") had made Appellant's Medicaid was inactive. (Respondent's Exhibit B, page 3; Testimony of ██████████).

4. The Waiver Agency continued to check on Appellant's Medicaid eligibility with Appellant's daughter and DHS throughout the month of ██████████ and it confirmed that, while an appeal was pending, Appellant was still deemed ineligible at all times. (Respondent's Exhibit B, pages 1-3; Testimony of ██████████).
5. On ██████████, the Waiver Agency sent Appellant and Appellant's attorney written notices that Appellant's services would be terminated and Appellant disenrolled from the program that day because, based on the determination made by DHS, Appellant was not financially eligible for services. (Petitioner's Exhibit 1, pages 3-4; Respondent's Exhibit A, pages 1-2).
6. On ██████████, DHS issued a decision reinstating Appellant's Medicaid eligibility, with a retroactive effective date of ██████████ (Testimony of ██████████).
7. On ██████████, Appellant's attorney contacted Appellant's supports coordinator regarding the reinstatement of Medicaid eligibility. (Testimony of ██████████).
8. Appellant's supports coordinator then scheduled an appointment with Appellant for ██████████ (Testimony of ██████████).
9. On ██████████, the Michigan Administrative Hearings System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-4).
10. On ██████████, Appellant was reassessed and found eligible for waiver services. (Testimony of ██████████).
11. Appellant was then reenrolled in the program and services were reinstated as of that day. (Testimony of ██████████ Testimony of ██████████)

## **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 ██████████, 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)*

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

**SECTION 2 – ELIGIBILITY [CHANGE MADE 10/1/14]**

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 two waiver services, one of which must be Supports Coordination, **(revised per bulletin MSA 14-26)** 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 [CHANGES MADE 10/1/14]**

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 the income limit to become financially eligible for MI Choice. **(revised 10/1/14)**

To initiate financial eligibility determination, waiver agencies must use the MI Choice Waiver Enrollment Notification form (MSA-0814) to notify DHS of individuals who have applied for MI Choice. The MI Choice Waiver Disenrollment Notification form (MSA-0815) must be used by waiver agencies to notify MDCH of participants who no longer qualify for MI Choice enrollment. (Refer to the Forms Appendix for additional information.) **(added per bulletin MSA 14-26)**

## **2.2 FUNCTIONAL ELIGIBILITY [CHANGE MADE 10/1/14]**

The MI Choice waiver agency must verify an applicant's medical/functional eligibility for program enrollment by inputting a valid Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) into the online LOCD application. A valid LOCD is defined as an LOCD that was completed in-person with the applicant according to MDCH policy and put in the online LOCD application within 14 calendar days after the date of enrollment into the MI Choice program. **(revised 10/1/14)** (Refer to the Directory

Appendix for website information.) The LOCD is discussed in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter. Additional information can be found in the Nursing Facility Coverages Chapter and is applicable to MI Choice applicants and participants.

The applicant must also demonstrate a continuing need for and use of at least two covered MI Choice services, one of which must be Supports Coordination. **(revised per bulletin MSA 14-26)** This need is originally established through the Initial Assessment using the process outlined in the Need for MI Choice Services subsection of this chapter.

*MPM, October 1, 2014 version  
MI Choice Waiver Chapter, pages 1  
(Internal highlighting omitted)*

As provided in the above policies, Appellant must meet all requirements for enrollment in the waiver program, including both financial and functional eligibility criteria, on an ongoing basis in order to receive services. Moreover, with respect to financial eligibility specifically, the Waiver Agency must rely on determinations made by DHS.

Pursuant to those policies, the Waiver Agency terminated Appellant's services in this case after DHS determined that Appellant was no longer eligible.

Appellant challenges that decision on appeal and, in doing so, bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred. Moreover, in reviewing the Waiver Agency's decision, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the decision in light of the information that was available at the time the decision was made.

Here, given the undisputed evidence, the Waiver Agency's decision to terminate services was proper. At the time of the negative action in this case, DHS had determined that Appellant was ineligible for Medicaid and, while an appeal with DHS was pending, Appellant continued to be ineligible for over a month before the Waiver Agency terminated services.

Appellant's representative and witness argue that DHS erred in making that determination, as demonstrated by the fact that the decision was reversed on appeal and Medicaid eligibility reinstated with a retroactive effective date of ██████████. However, while it is true that the initial DHS decision was reversed on appeal, the Waiver Agency must rely on DHS' determination and, at the time of the negative action in this case, DHS had determined that Appellant was ineligible.

Appellant's representative also argue that, given that DHS subsequently reversed its decision and reinstated eligibility with a retroactive effective date, the Waiver Agency should do the same and, instead of simply reenrolling Appellant on ██████████, it should have also made Appellant's reenrollment retroactively effective and there never should have been a gap in services. However, Appellant was properly disenrolled from the program given the information available at the time and, while the specific reason for the disenrollment was subsequently removed, Appellant was out of the program and the Waiver Agency had to ensure that Appellant met all requirements for waiver services before reenrolling her.

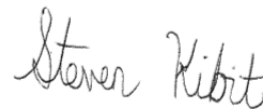
Accordingly, Appellant has failed to meet her burden of proving by the preponderance of the evidence that the Waiver Agency erred and ██████'s decision must be affirmed.

**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**.



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Steven Kibit  
Administrative Law Judge  
for Director, Nick Lyon  
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

SK/db

cc: ██████████  
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**\*\*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.