

**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:

██████████

Docket No. 2014-12621 CMH
Case No. ██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified. ██████████ appeared as a witness on behalf of Appellant.

██████████, Attorney, represented ██████████ ██████████ ██████████, (CMH) subcontracting with the Michigan Department of Community Health (DCH). The following witnesses appeared on behalf of the CMH: ██████████, MA Fair Hearing Officer, ██████████, Supports Coordinator Manager, and ██████████, Supports Coordinator.

ISSUE

Is there jurisdiction to review a request for a hearing regarding the payment of provider in a self-determination case where there has been no change, reduction, or termination of Medicaid services?

FINDINGS OF FACT

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

1. Michigan Department of Community Health (Department) subcontracts with the Department of Mental Health, who in turn subcontracts with ██████████ ██████████ CMH to provide certain Medicaid covered services to Medicaid beneficiaries who reside within their assigned area.

2. Appellant is an █████ year old Medicaid beneficiary, born █████, who is diagnosed with spinal muscular atrophy and utilizes an electric wheelchair for mobility. (Exhibit A.51)
3. Appellant is a resident of █████ and receives Community Living Services.
4. A Personal Annual Plan was developed for Appellant on █████. Appellant has chosen to receive his services through self-determination.
5. Appellant began attending the █████ in █████. Appellant acknowledged that a caregiver could be selected without delay from an approved service organization, or, one of his choice. Appellant chose an individual who had not been certified by the state. Appellant and his caregiver acknowledged, pursuant to a signed Employee and Medicaid Provider agreement, that in order for an individual to be paid by the Department, that all training and eligibility requirements must be met. (Exhibits A.62, 67, 64, 68)
6. On █████ Appellant's caregiver completed all the necessary requirements.
7. Appellant's caregiver/employee provided services before completing all the necessary requirements. On █████ Appellant requested a hearing requesting that his provider be paid from █████ to █████.
8. The Department did not reduce, terminate or deny any Medicaid services from █████ to █████.

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.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services,

payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

Section 1915 (c) of the Social Security Act provides:

The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Community Health to provide Medicaid funded services through the CMH Managed Care Provider Network to persons who meet the service selection criteria for Medicaid funded services.

The Michigan DCH has established a Behavioral Health and Developmental Disabilities Self-Determination Policy & Practice Guideline that outlines the self-determination policies and guidelines. Policy Section II.E.5 identifies when an individual has a right to a fair hearing:

...Only a change, reduction, or termination of Medicaid

services can be appealed through the Medicaid Fair Hearings Process, not the use of arrangements that support self-determination to obtain those services. P.8, Issued October 1, 2012

In this case, Appellant and his provider acknowledged by signing agreements indicating that they were fully aware of the necessity of any personally selected provider to meet the Department's requirements for payment. There is no issue regarding the competency or ability of Appellant's provider. However, the Department has established certification requirements that all individuals who provide services must meet as a condition of payment. Evidence on the record indicates that the Department took no action under which Appellant would have a right of review under the Fair Hearings process. As such, this ALJ has no jurisdiction to review Appellant's request for a hearing, and thus,

Appellant's request for a hearing must be dismissed due to lack of jurisdiction.

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

[REDACTED]
cc: [REDACTED]

Date Signed: April 11, 2014

Date Mailed: April 11, 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 and Rules 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.