

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS 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:

████████████████████

Appellant

_____ /

Docket No. 2014-16880 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf. ██████████, Appellant's son, appeared as a witness for Appellant.

██████████ Community Services Director, represented the Department's MI Choice Waiver Agency, the ██████████, (Waiver Agency or ██████████). ██████████, RN, Supports Coordinator, appeared as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's 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. Appellant is an ██████ year old Medicaid beneficiary, born ██████████. (Exhibit 1; Testimony)
2. Appellant was enrolled in the MI Choice Waiver Program. (Testimony).
3. Appellant resides with her son in the son's home. (Exhibit A, p 1; Testimony)
4. On ██████████, Appellant's personal care services were put on hold because her providers discovered a bed bug infestation. (Exhibit A, p 1; Testimony)

5. The Waiver Agency sent a pest company to inspect the home. The pest company verified the presence of bed bugs. The Waiver Agency then attempted to work with Appellant's son to get the issue resolved. Appellant's son was given a list of tasks that needed to be completed before the pest company could perform extermination services. The Waiver Agency also began researching whether they could pay for the extermination services given that Appellant lived in her son's home and brought income with her to that home. (Exhibit A, p 1; Testimony)
6. During the time Appellant's services were suspended by the Waiver Agency, Appellant began receiving personal care services through another community services organization. (Exhibit A, p 1; Testimony)
7. On [REDACTED], the Waiver Agency notified Appellant that her services were being terminated due to the fact that she was now receiving services through another agency. (Exhibit A, p 1; Testimony)
8. On [REDACTED], Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1)

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 is claiming 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 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)

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2013, which provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDs). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).

* * *

SECTION 2 - ELIGIBILITY

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 his/her 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 one waiver service 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. (p.1, emphasis added).

* * *

2.3. NEED FOR MI CHOICE SERVICES

In addition to meeting financial and functional eligibility requirements and to be enrolled in the program, MI Choice applicants must demonstrate the need for a minimum of one covered service as determined through an in-person assessment and the person-centered planning process.

Note: Supports coordination is considered an administrative activity in MI Choice and does not constitute a qualifying requisite service. Similarly, informal support services do not fulfill the requirement for service need.

An applicant cannot be enrolled in MI Choice if his/her service and support needs can be fully met through the intervention of State Plan or other available services. State Plan and MI Choice services are not interchangeable. MI Choice services differ in nature and scope from similar State Plan services and often have more stringent provider qualifications. (p. 3, emphasis added).

* * *

Michigan Medicaid Provider Manual
MI Choice Waiver Section
October 1, 2013, pp 1, 3

The MI Choice Waiver Program is a Medicaid-funded program and its Medicaid funding is a payor of last resort. In addition, Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services. *42 CFR 440.230*. In order to assess what MI Choice Waiver Program services are medically necessary, and therefore Medicaid-covered, the Waiver Agency performs periodic assessments.

The Waiver Agency witness testified that Appellant's personal care services were put on hold on [REDACTED] because of a bed bug infestation. The Waiver Agency witness indicated that they sent a pest company to inspect the home and the pest company verified the presence of bed bugs. The Waiver Agency witness indicated that they then attempted to work with Appellant's son to get the issue resolved, while also

██████████
Docket No. 2014-16880-EDW
Hearing Decision & Order

researching whether or not the Waiver Agency could pay for extermination services given that Appellant was living in her son's home and brought with her income to that home. The Waiver Agency witness indicated that during the time Appellant's services were suspended by the Waiver Agency, Appellant began receiving personal care services through another community services organization. The Waiver Agency witness testified that Appellant's services were then terminated because Appellant no longer met the criteria for MI Choice Waiver services because her needs were being met through another community agency.

Appellant's son testified that his mother had been living with his sister in ██████████ and had to leave that home because of a bed bug infestation. Shortly after Appellant arrived at the son's home in Michigan, they noticed bed bugs and the son got an estimate to exterminate them. Unfortunately, Appellant's son could not afford the estimate, so he fumigated the bed bugs on his own at a much lower cost. Appellant's son indicated that sometime after that, one of Appellant's providers came to the home and noticed one bed bug. Appellant's son indicated that he was working with his Supports Coordinator and was under the belief that the Waiver Agency would help with the cost of extermination. During this period, Appellant's son indicated that Adult Protective Services came to the home and arranged for Appellant to receive personal care services. Appellant's son indicated that one of his main concerns was that since Appellant was dropped from the MI Choice Waiver program she now has a spend-down with her Medicaid that she cannot afford.

In response, the Waiver Agency witness indicated that if Appellant's needs have changed since her termination, he can contact the Waiver Agency for another assessment.

This ALJ finds that the Waiver Agency properly terminated Appellant's services. As indicated above, "An applicant cannot be enrolled in MI Choice if his/her service and support needs can be fully met through the intervention of State Plan or other available services." Here, while Appellant's services had properly been suspended for failing to provide a safe environment for her providers to work in, she began receiving services through another community agency. As such, Appellant's needs can be met through "other available services" and she is no longer eligible for the MI Choice Waiver program.

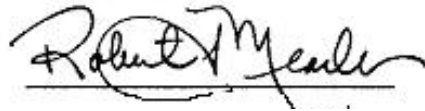
If Appellant's needs change, she can always ask for another assessment.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the MI Choice Waiver Agency properly terminated Appellant's services.

IT IS THEREFORE ORDERED that:

The MI Choice Waiver Agency's decision is **AFFIRMED**.



Robert J. Meade
Administrative Law Judge
for James Haveman Jr., Director
Michigan Department of Community Health

[REDACTED]
Date Signed: February 6, 2014

Date Mailed: February 6, 2014

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.