

**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:

██████████,

Appellant

Docket No. 2014-19740 EDW

██████████

██████████

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 Hearing filed by Appellant.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Assistant Supervisor of the Care Management Department, appeared and testified on behalf of the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency" or "Information Center").

ISSUE

Did the Waiver Agency properly reinstate Appellant's homemaking 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. The Information Center is a contract agent of the Department and the agency responsible for the provision of Appellant's MI Choice services.
2. Appellant had been receiving █ hours of homemaking services through the Waiver Agency. (Respondent's Exhibit A, page 1).
3. On ██████████, the Waiver Agency sent Appellant an Advance Action Notice stating that her homemaking services would be terminated effective ██████████ due to Appellant's failure to be available for a reassessment. (Respondent's Exhibit A, page 2).
4. On ██████████ Appellant's services were terminated as provided in the advance notice. (Testimony of Appellant; Testimony of ██████████).

5. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant with respect to the termination of her services. (Respondent's Exhibit A, page 2).
6. After due notice, an administrative hearing was held on ██████████ before the undersigned Administrative Law Judge. (Respondent's Exhibit A, page 1).
7. On ██████████, the undersigned Administrative Law Judge issued a Decision and Order reversing the Waiver Agency's decision and ordering it to initiate a reinstatement of Appellant's services. (Respondent's Exhibit A, pages 1-6).
8. The Waiver Agency received a copy of the Decision and Order on ██████████ (Testimony of ██████████).
9. On ██████████, it contacted Appellant in order to schedule a reassessment. (Respondent's Exhibit C, page 3; Testimony of ██████████).
10. On ██████████, a reassessment was held with Appellant in her home. (Respondent's Exhibit C, page 3; Testimony of ██████████).
11. On ██████████, Appellant's services were reinstated in the amount of █ hours per week, but as Community Living Supports (CLS) instead of homemaking services due to a change in policy. (Respondent's Exhibit C, page 3; Testimony of Appellant; Testimony of ██████████).
12. On ██████████ MAHS received a new Request for Hearing filed by Appellant with respect to the termination of her services. (Respondent's Exhibit D, pages 1-2).

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.

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 Information Center, 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. See 42 CFR 430.25(c)(2).

Types of services that may be offered include:

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR 440.180(b)

Here, Appellant's homemaking services were terminated and, while she appealed that termination, her request for hearing was filed too late to keep her services in place while the appeal was pending. Appellant then prevailed in her appeal and her services were promptly reinstated as CLS.

Appellant does not dispute the events described above, but does argue that the termination of waiver services also affected her Medicaid coverage and the transportation she previously received through Medicaid.

However, while Appellant's claims may be true, this Administrative Law Judge's jurisdiction is limited to reviewing the Waiver Agency's actions and, given the above facts, its actions after the previous decision and order were proper.

To the extent Appellant has issues with her Medicaid coverage or transportation through Medicaid, she needs to pursue her remedies through her Medicaid case worker and the Michigan Department of Human Services (DHS).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly reinstated Appellant's services.

IT IS THEREFORE ORDERED that:

The Waiver Agency's actions are **AFFIRMED**.

Steven Kibit


Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]


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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.