

**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. 2014-22393 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 Hearing filed by Appellant.

After due notice, a hearing was held on ██████████ appeared on Appellant's behalf. Appellant also testified on her own behalf. ██████████ Clinical Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████). Social workers/Supports Coordinators ██████████ and ██████████ also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly reduce 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 and the agency responsible for the provision of Appellant's MI Choice services.
2. Appellant is a ██████████-year-old woman who has been has been diagnosed with coronary heart disease; chronic obstructive pulmonary disease; hypertension; arthritis; osteoporosis; anxiety; depression; dementia; and a urinary tract infection. (Respondent's Exhibit B, pages 1, 8-9).
3. Appellant had been receiving services through ██████████, including a Personal Emergency Response System (PERS) unit, home delivered meals, homemaking services, personal care services, non-medical transportation, and liquid supplements. (Testimony of ██████████).
4. On ██████████ sent Appellant written notice that her

services through the MI Choice waiver program would be terminated in ██████ days.

5. Appellant appealed that termination and, after due notice, an administrative hearing was held before the undersigned Administrative Law Judge.
6. 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.
7. The Waiver Agency received a copy of the Decision and Order on ██████████. (Testimony of ██████).
8. On ██████████, a meeting was held with Appellant in her home. (Respondent's Exhibit B, pages 1-16).
9. On ██████████ sent Appellant a written Adequate Action Notice stating that her request for services was partially approved and partially denied. (Respondent's Exhibit A, pages 1-2).
10. Specifically, Appellant was approved for less homemaking/personal services and less home delivered meals than she requested and had been receiving previously. (Respondent's Exhibit A, pages 1-2; Testimony of ██████).
11. The Waiver Agency also subsequently increased or agreed to increase Appellant's homemaking/personal services several times, but never to the amount to amount Appellant was receiving prior to the earlier termination. (Testimony of ██████).
12. On ██████████, MAHS received a new Request for Hearing filed by Appellant with respect to the failure to reinstate her services and the reduction in those services. (Petitioner's Exhibit 1, 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 ██████████ 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 was receiving services through the Waiver Agency until those services were terminated in ██████████. Appellant then appealed that termination and an administrative hearing was held. After that hearing, the undersigned Administrative Law Judge ordered that the Waiver Agency's decision was reversed and that it must initiate a reinstatement of Appellant's services.

Given the lapse in Appellant's services, as well as the lack of a current care provider, the Waiver Agency properly scheduled a meeting with Appellant as part of the reinstatement of her services.

However, following that meeting, the Waiver Agency did not reinstate Appellant's services at the level she had been receiving before and, instead, only authorized a lesser amount of waiver services. By doing so, the Waiver Agency failed to comply with the Decision and Order of the undersigned Administrative Law Judge.

Additionally, even if the Waiver Agency's believes that Appellant's services should be reduced from the previous amount she was receiving, the action in this case was improper as the Waiver Agency failed to provide the required advance notice of any such reduction and Appellant's right to appeal. For example, with respect to negative actions and appeals, the Michigan Medicaid Provider Manual (MPM) states:

SECTION 11 - APPEALS

The Michigan Department of Community Health has established participant and provider appeal processes that are applicable to MI Choice. The participant appeals process conforms to the Medicaid fair hearing requirements found at 42 CFR Part 431, Subpart E of the Code of Federal Regulations. Provider appeal rights conform to the requirements of Michigan law and rules found at MCL 400.1 et seq. and MAC R 400.3401 et seq.

11.1 PARTICIPANT APPEALS

MI Choice has established notice and appeals requirements to which waiver agencies must adhere when adverse action has been taken for program applicants or participants. According to 42 CFR 431.201, "Action" means a termination, suspension, or reduction of Medicaid eligibility or of covered services. This also includes determinations by the waiver agent that the applicant or participant does not meet the nursing facility level of care criteria and other denials of

Medicaid eligibility or of covered services.

11.1.A. ADEQUATE ACTION NOTICES

MI Choice waiver agencies must send an Adequate Action Notice to applicants or participants informing them of adverse actions and determinations taken under the following circumstances:

- when the waiver agency is at operating capacity and unable to enroll MI Choice applicants who request a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- when the waiver agency determines applicants to be functionally ineligible for MI Choice services based on the results of a LOCD.
- when a participant requests additional services or additional amounts of services and the waiver agency denies the request
- when an existing benefit is reduced, suspended or terminated, and meets the requirements for an exception from an Advance Action Notice as specified in 42 CFR 431.213.

11.1.B. ADVANCE ACTION NOTICES

An Advance Action Notice must be sent to MI Choice participants when action is being taken to reduce, suspend, or terminate service(s) a participant currently receives. This notice must be provided at least 12 days in advance of the intended action.

An Advance Action Notice is also issued if it is determined that a reduction in level or number of services is warranted based on the participant's current assessment. The notice must inform the participant that services will not be reduced until a formal decision has been rendered through the Medicaid Fair Hearings process if the participant

formally requests a hearing before the specified date of the intended action.

11.1.C. NOTICES

Advance Action Notices and Adequate Action Notices that relate to the LOCD process are posted on the MDCH website. (Refer to the Directory Appendix for website information.)

Waiver agencies may use additional notices for actions not related to the LOCD process. These notices must be approved by MDCH prior to use to assure compliance with 42 CFR 431.210. Waiver agencies must supply a copy of the Request for Hearing form (DCH-0092) and a return envelope with each notice sent to an applicant or participant, or any time an applicant or participant requests such material. Waiver agencies are required to assist applicants or participants who request help in filing an LOCD exception review through the Michigan Peer Review Organization (MPRO), or a formal appeal for any reason through the Medicaid fair hearings process.

*MPM, January 1, 2014 version
MI Choice Waiver Chapter, pages 34-35*

To the extent that ██████ still wants to reduce Appellant's services, it can send out a new and proper advance action notice regarding any proposed reductions. Appellant would then have the opportunity to file a new Request for Hearing and, if necessary, another administrative hearing would be held.

With respect to the issue in dispute in this case, *i.e.* the Waiver Agency's failure to comply with the previous order and its decision to reinstate Appellant's services at reduced levels, ██████ decisions must be reversed due to the lack of any proper advance notice of a reduction.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency improperly reduced Appellant's services through the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that:

The Waiver Agency's actions are **REVERSED** and it must initiate a reinstatement of Appellant's services to their previous level.

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: 3 [REDACTED]

SK/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.