

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. 2014-30137 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 and testified on his own behalf.

██████████, Hearing Coordinator, appeared on behalf of the Department's Waiver Agency, ██████████ Community Service Agency (██████████ or Waiver Agency). ██████████, Case Manager and ██████████, RN, Case Manager appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant from 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 Department contracts with ██████████ to provide MI Choice Waiver services to eligible beneficiaries. (Exhibit A, Testimony)
2. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department. (Testimony)
3. Appellant is a ██████ year-old Medicaid beneficiary, born ██████████. Appellant is diagnosed with late effect hemiplegia, generalized muscle weakness, difficult walking, chronic pain, and history of traumatic brain injury. (Exhibit A, p 10; Testimony)

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4. Appellant lives alone in an apartment. Appellant tries to visit his mother once or twice a week and speaks to her on the phone daily. Appellant enjoys playing on the computer. Appellant's mother is his main social support. (Exhibit A, p 8; Testimony)
5. Following an in-home reassessment on [REDACTED], the Waiver Agency determined that Appellant's needs could now be met by the Department of Human Services Adult Home Help (DHS AHH) program due to health improvement. (Exhibit A, pp 10, Testimony)
6. On [REDACTED], the Waiver Agency gave Appellant an Advance Action Notice informing him that his services through the MI Choice Waiver Program would be terminated effective [REDACTED]. (Exhibit A, pp 12-13)
7. On [REDACTED], the Waiver Agency gave Appellant an Advance Action Notice informing him that his services through the MI Choice Waiver Program would be terminated effective [REDACTED]. (Exhibit A, pp 14-15)
8. On [REDACTED], the Waiver Agency gave Appellant an Advance Action Notice informing him that his services through the MI Choice Waiver Program would be terminated effective [REDACTED]. (Exhibit A, pp 16-17)
9. On [REDACTED], the Michigan Administrative Hearing System received a request for hearing from the Appellant. (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

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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)*.

Home and community based services means services not otherwise furnished under the State’s Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. *42 CFR 440.180(a)*.

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)*.

On [REDACTED], the Department issued MI Choice Operations Advisory Letter #26. The letter states in part:

MI CHOICE CONTRACT REQUIREMENTS

The MI Choice contract requires waiver agents to seek all other forms of payment before authorizing MI Choice services (Attachment K, pp. 43-44).

The HHS program is another form of payment for home and community based services, and therefore the participant and supports coordinators must fully consider this option **before** MI choice enrollment. MI Choice participants cannot receive services from both the HHS program and MI Choice, as this is a duplication of Medicaid services. (Attachment K, pp. 25-26).

The MI Choice Policy Chapter of the Medicaid Provider Manual 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.

* * *

2.2.B. FREEDOM OF CHOICE

Applicants or their legal representatives must be given information regarding all long-term care service options for which they qualify through the NF LOCD, including MI Choice, Nursing Facility and the Program of All-Inclusive Care for the Elderly (PACE). That a participant might qualify for multiple programs does not mean they can be served by all or a combination thereof for which they qualify. Nursing facility, PACE, MI Choice, and Adult Home Help services may not be chosen in combination with each other. Applicants must indicate their choice, subject to the provisions of the Need for MI Choice Services subsection of this chapter, and document via their signature and date that they have been informed of their options via the Freedom of Choice (FOC) form that is provided to an applicant at the conclusion of any LOCD process. Applicants must also be informed of other service options that do not require Nursing Facility Level of Care, including Home Health and Home Help State Plan services, as well as other local public and private service entities. The FOC form must be signed and dated by the individual (or his/her legal representative) seeking services and is to be maintained in the participant case record.

* * *

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. Emphasis added.

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home.

*Medicaid Provider Manual
MI Choice Waiver Section
January 1, 2014, pp 1-5*

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's witness testified that she met with Appellant in his home on ██████████ for a reassessment and also spoke to Appellant's caregivers. The Waiver Agency's witness indicated that the caregivers told her that they were not helping Appellant with any personal care needs, but rather were doing housekeeping and meal preparation. The Waiver Agency's witness indicated that the caregivers also informed her that they spent a lot of time just visiting with Appellant because they did not have enough work to do. The Waiver Agency's witness testified that when she met with Appellant she determined that his mobility had improved and that he could take care of his Activities of Daily Living (ADL's) mostly on his own. The Waiver Agency's witness indicated that Appellant was sometimes a little shaky in his gait, but that he could get around his apartment okay. The Waiver Agency's witness testified that she determined that Appellant's needs could be met through the DHS-AHH program.

Appellant testified that his mobility has worsened recently and he has just completed a 6 week course of physical therapy, which has again improved his mobility. Appellant indicated that he cannot make his bed and cannot cook. Appellant testified that he agrees that the 7 days per week of service he was receiving previously was probably too much, but that DHS-AHH only comes 2 times per week, 4 hours each time, and that is not enough.

The MPM provides, "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.”

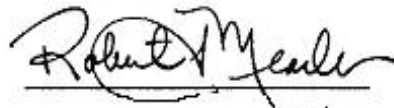
Here, Appellant did not prove by a preponderance of evidence that the Waiver Agency erred in referring Appellant to DHS-AHH. The evidence shows that Appellant’s condition has improved to such an extent that his needs can now be met through DHS-AAH. Appellant did not provide any sworn testimony or evidence to show that he needed a specific service provided only through the MI Choice Waiver program or that his needs could not be met through the DHS-AHH program. Appellant is independent in all of his ADL’s and needs assistance with housekeeping and meal preparation, which can be provided through DHS-AHH.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined the Appellant was not eligible for the MI Choice Waiver Program because his needs can be met through the DHS AHH program.

IT IS THEREFORE ORDERED that:

The Department’s decision is AFFIRMED.



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

cc:



Date Signed: April 3, 2014

Date Mailed: April 3, 2014

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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.