

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2014-35871 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appellant's grandson, also testified as witness for Appellant. ██████████, Social Work Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ██████████ ("Waiver Agency" or "██████████"). ██████████, social worker, also testified as witness for ██████████.

Following the hearing, the record was left open until ██████████ so that Appellant could submit additional evidence and the Waiver Agency could respond to that evidence.

ISSUE

Did the Waiver Agency properly suspend 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 of Community Health ("DCH") and is responsible for the provision of MI Choice waiver services.
2. On ██████████, the Michigan Department of Human Services ("DHS") issued a Notice of Case Action stating that Appellant's Medicare Savings Program coverage was closed effective ██████████ and his Medicaid Program coverage was approved effective ██████████. (Petitioner's Exhibit B, pages 1-2).

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3. On [REDACTED], Appellant was enrolled in the waiver program through [REDACTED]. (Testimony of [REDACTED]).
4. However, that enrollment was conditional on DHS finding that Appellant was financially eligible for the program. (Testimony of [REDACTED]).
5. After the conditional enrollment, the Waiver Agency repeatedly searched the [REDACTED] System, but that system did not identify Appellant as eligible. (Testimony of [REDACTED]).
6. The Waiver Agency also sent alerts and requests to DHS seeking confirmation of financial eligibility, but it never received such a confirmation. (Testimony of [REDACTED]).
7. On [REDACTED], the Waiver Agency sent Appellant a written 45 Day Medicaid Warning Letter stating that it has not yet received confirmation of Appellant's Medicaid eligibility or financial eligibility for the program. (Petitioner's Exhibit C, page 1).
8. The letter also asked Appellant to contact DHS, request a copy of the Decision Notice of Eligibility for Waiver Services, and to forward any information on to [REDACTED]. (Petitioner's Exhibit C, page 1).
9. The letter further provided that Appellant's services could be terminated or interrupted if the Waiver Agency did not receive notice of financial eligibility. (Petitioner's Exhibit C, page 1).
10. On [REDACTED], Appellant faxed [REDACTED] a copy of the Notice of Case Action, dated [REDACTED], that he had received from DHS. (Petitioner's Exhibit B, pages 1-2; Testimony of Appellant).
11. However, Appellant did not contact DHS or obtain any notice of his financial eligibility for waiver services. (Testimony of Appellant).
12. On [REDACTED], the Waiver Agency sent Appellant written notice that his services would be suspended because he was not eligible to receive waiver services. (Petitioner's Exhibit 1, page 2).
13. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-2).
14. Appellant did not contact [REDACTED] after receiving the notice of suspension and, other than filing the appeal with MAHS, he did not take any other action with respect to his waiver services. (Testimony of Appellant).

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.

The 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.

42 CFR 430.25(c)(2)

Regarding eligibility for the waiver program, the applicable version of the Michigan Medicaid Provider Manual (MPM) states in part:

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 their 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.

2.1 FINANCIAL ELIGIBILITY

Medicaid reimbursement for MI Choice services requires a determination of Medicaid financial eligibility for the applicant by the Michigan Department of Human Services (MDHS). As a provision of the waiver, MI Choice applicants benefit from an enhanced financial eligibility standard compared to basic Medicaid eligibility. Specifically, MI Choice is furnished to participants in the special home and community-based group under 42 CFR §435.217 with a special income level equal to 300% of the SSI Federal Benefit Rate. Medicaid eligibility rules stipulate that participants are not allowed to spend down to achieve an enhanced financial eligibility standard.

MPM, April 1, 2014 version
MI Choice Waiver Chapter, page 1

Given that clear policy, Appellant must establish his financial eligibility for Medicaid services on an ongoing basis and the Waiver Agency must rely on the determination of financial eligibility made by DHS.

In this case, the Waiver Agency's repeatedly sought confirmation of Appellant's financial eligibility from DHS, but it never found such a confirmation in the ██████████ System or received anything from DHS directly. Moreover, while it advised Appellant of that failure and his need to contact DHS directly, Appellant only provided a Notice of Case Action from DHS indicating that he had been approved for Medicaid effective ██████████

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Appellant never contacted DHS and no determination of financial eligibility for the relevant time period was ever provided. Similarly, Appellant never contacted DHS and no determination of financial eligibility was ever provided after the Waiver Agency sent Appellant the notice of suspension in this case.

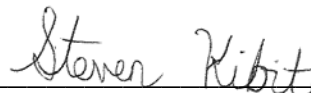
Accordingly, Appellant has failed to meet his burden of proving by the preponderance of the evidence that the Waiver Agency erred in suspending his services and [REDACTED] decision must be affirmed. As discussed above, [REDACTED] requires a determination of financial eligibility made by DHS in order to provide services and no such determination was provided in this case.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [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

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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.