

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:

Docket No. [REDACTED]

[REDACTED]
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 a hearing filed on behalf of Appellant.

After due notice, a hearing was held on [REDACTED] [REDACTED] Appellant's daughter and legal guardian, appeared and testified on Appellant's behalf. [REDACTED], a Registered Nurse (RN) and RN Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the [REDACTED] [REDACTED] ("Waiver Agency" or "[REDACTED]"). [REDACTED] a RN and Case Manager, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's enrollment in 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. [REDACTED] is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for the provision of MI Choice waiver services.
2. On [REDACTED] determined that Appellant was found to be functionally eligible for the MI Choice Waiver Program and was therefore enrolled in the program, pending a determination of Appellant's financial eligibility by the Michigan Department of Human Services (DHS). (Testimony of [REDACTED]).
3. DHS subsequently determined that Appellant was not financially eligible for Medicaid or the waiver program. (Testimony of [REDACTED]).

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4. Appellant's representative has never spoken to anyone at DHS and does not believe Appellant has ever applied for Medicaid. (Testimony of [REDACTED])
5. On [REDACTED] sent Appellant a [REDACTED] Day Medicaid Warning Letter indicating that it had not received confirmation of Appellant's Medicaid eligibility or financial eligibility for the MI Choice Waiver program. (Respondent's Exhibit D, page 1).
6. That letter also indicated that [REDACTED] would need such confirmation in order for Appellant to remain in the program. (Respondent's Exhibit D, page 1).
7. On [REDACTED] sent Appellant a Warning Closure Letter indicating that her application would be closed in [REDACTED] days because she is not eligible for waiver services. (Respondent's Exhibit E, page 1).
8. That letter also indicated that [REDACTED] needed DHS approval regarding Appellant's financial eligibility to provide services. (Respondent's Exhibit E, page 1).
9. [REDACTED] never received confirmation of such approval and Appellant's case was therefore closed as scheduled. (Testimony of [REDACTED]).
10. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, page 1).
11. Since [REDACTED] Appellant has received [REDACTED] hours of week of services from [REDACTED] through another program. (Testimony of [REDACTED])

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 [REDACTED], function as the Department's administrative agency.

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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, July 1, 2013 version
MI Choice Waiver Chapter, page 1*

Given that clear policy, the Waiver Agency must rely on the determination of financial eligibility made by DHS and, in this case, it properly ended Appellant's enrollment after DHS made the determination that Appellant was ineligible.

Appellant's representative/guardian testified that she was unaware of any issues with DHS or with Appellant's financial eligibility prior to the hearing. However, while this Administrative Law Judge sympathizes with Appellant and her guardian, the above policy is clear and the Waiver Agency cannot provide waiver services where DHS has determined that Appellant is financially ineligible.

To the extent Appellant's representative/guardian wishes to dispute any determinations made by DHS, this Administrative Law Judge lacks jurisdiction to hear those issues and Appellant is encouraged to pursue the matter through DHS. The decision at issue in this appeal, however, clearly must be sustained.

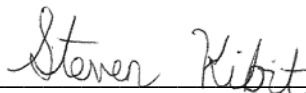
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly terminated Appellant's enrollment in the MI Choice waiver program.

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IT IS THEREFORE ORDERED that:

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



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

Date Signed: _____

Date Mailed: _____

SK/db

cc:



***** 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.