

**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.** 2014-400 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 the Appellant's request for a hearing.

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 ██████████).

**ISSUE**

Did the Waiver Agency properly terminate 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 waiver agent of the Michigan Department of Community Health and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
2. However, ██████████ does not provide services itself and instead, contracts with a number of direct service providers and has those vendors provide the approved services. (Testimony of ██████████).
3. Appellant is a ██████████-year-old woman who has been has been enrolled in and receiving MI Choice waiver services through ██████████. (Respondent's Exhibit D, pages 1-6).

4. Specifically, she has received a Personal Emergency Response System (PERS) unit, home delivered meals, homemaking services, personal care services, non-medical transportation, and liquid supplements. (Respondent's Exhibit A, page 1).
5. Since Appellant started receiving waiver services, she has used all ██████████ of the service provider agencies that contract with ██████████. (Testimony of ██████████)
6. A few of those service providers were switched after Appellant complained about the workers not doing their jobs adequately. (Testimony of Appellant).
7. However, Appellant never specifically requested that the service providers be switched and only wanted to receive the medically necessary services she had been approved for. (Testimony of Appellant).
8. At the start of ██████████ was the service provider supplying Appellant's services pursuant to its contract with ██████████ (Testimony of Appellant; Respondent's Exhibit D, page 5).
9. On ██████████, Respondent's representative, completed a monthly contact telephone call with Appellant. (Respondent's Exhibit D, page 6).
10. On ██████████, an incident occurred between Appellant and her care worker during which Appellant accused the worker of stealing ██████████ and some identification cards. (Testimony of Appellant; Respondent's Exhibit D, pages 4-5).
11. Appellant did not report any theft to the police at that time. (Testimony of Appellant).
12. Appellant did call her supports coordinator, ██████████, but ██████████ was out on vacation at that time. (Testimony of Appellant; Respondent's Exhibit D, page 4).
13. The workers from ██████████ stopped providing services after that day. However, the service provider never reported to ██████████ that services had stopped. (Respondent's Exhibit D, page 5).
14. Appellant's supports coordinator failed to make a monthly contact telephone call with Appellant in ██████████ (Respondent's Exhibit D, page 4).

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15. On ██████████, Appellant's supports coordinator telephoned Appellant for their monthly contact. (Respondent's Exhibit D, page 4).
16. At that time, ██████ learned that Appellant had accused a worker of theft and that ██████ was no longer providing services. (Respondent's Exhibit D, page 4).
17. ██████ suggested that Appellant call the police, but Appellant indicated that she was not interested in doing so at that time. (Respondent's Exhibit D, page 4; Testimony of Appellant).
18. Appellant did state that she did not want ██████ coming back. (Respondent's Exhibit D, page 4).
19. ██████ then called ██████. The representative for ██████ reported that Appellant has accused someone else of theft first and only accused the worker after the worker refused to do something outside of her job description. (Respondent's Exhibit D, page 5).
20. The representative for ██████ also reported that none of its workers were willing to provide care for Appellant and that ██████ had not provided care since ██████████. (Respondent's Exhibit D, page 5).
21. Subsequently, ██████ and her supervisor spoke about Appellant's case and determined that Appellant's services should be terminated. (Respondent's Exhibit D, page 5).
22. On ████████████████████ sent Appellant written notice that her services through the MI Choice waiver program would be terminated in ██████ days. (Respondent's Exhibit A, pages 1-2).
23. The notice did not identify any specific reason for the termination. (Respondent's Exhibit A, pages 1-2).
24. The Waiver Agency did also develop Discharge Plan Recommendations at the same time which stated that Appellant's services had been terminated "because of the failure to uphold the responsibilities as stated the Community Supports Services Participant Handbook" (Respondent's Exhibit B, page 1), but it is not clear if those recommendations were forwarded to Appellant (Testimony of Appellant; Testimony of ██████████).
25. On ████████████████████ the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant regarding that termination. (Petitioner's Exhibit 1, page 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.

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 waiver 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.

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- 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, ██████████ terminated Appellant's services on the basis that Appellant has gone through all ██████████ service providers that contract with ██████████ and ██████████ has no providers left that can provide services to Appellant. According to ██████████, either Appellant refused to continue to work with the service providers or the service providers refused to work with Appellant. (Testimony of ██████████).<sup>1</sup>

██████████ did not, however, identify any law or policy stating that it could terminate medically necessary services simply because it could not supply an appropriate service provider. Moreover, the Michigan Medicaid Provider Manual (MPM) clearly provides that "Waiver agencies are responsible for securing qualified service providers to deliver services." MPM, ██████████, version, MI Choice Waiver Chapter, page 22.

Even if such a policy does exist, the record in this case does not even support ██████████ assertion that no service providers are available. Appellant credibly testified that, while she had complained about workers not doing their jobs in the past, she has never refused to work with any provider prior to ██████████. ██████████ did not provide any evidence contradicting Appellant's testimony and its sole witness had no knowledge of why services stopped through the previous eight service providers. ██████████ also failed to present any evidence or testimony suggesting that any service providers, other than ██████████, has refused to provide services to Appellant.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in terminating her services. Here, for the reasons discussed above, Appellant has met that burden and the Waiver Agency's decision must be reversed. It is undisputed that Appellant's services are still medically necessary and,

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<sup>1</sup> The Discharge Plan Recommendations and Respondent's progress notes regarding Appellant's case briefly alluded to other reasons for the termination, including claims that Appellant was verbally abusive to her care workers and failed to provide them with a safe environment. (Respondent's Exhibit B, page 1; Respondent's Exhibit D, pages 1-6). However, Appellant did not rely on those reasons during the hearing or submit any testimony or other evidence in support of those claims.

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whatever happened with [REDACTED], it appears that [REDACTED] has service providers available to provide the authorized services to Appellant.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED** that:

The Waiver Agency's decision to terminate Appellant's waiver services is **REVERSED** and it must initiate the reinstatement of Appellant's services.

*Steven Kibit*

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

Date Signed: 1 [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 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.