

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant.

_____ /

Docket No. 15-003842 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's caregiver, appeared and testified on Appellant's behalf. ██████████, Appellant's sister, appeared as a witness. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Supervisor, appeared as a witness for the Department.

ISSUE

Did the Department properly terminate Appellant's Home Help Services (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████-year-old Medicaid beneficiary, born March 11, 1941. (Exhibit 1; Testimony).
2. Appellant has been receiving Home Help Services (HHS) for many years. (Exhibit A, pp 8-10; Testimony).
3. In ██████████, Appellant's HHS payments were stopped because Appellant changed caregivers and the new caregiver needed to pass a background check and obtain a provider identification number. (Exhibit A, p 7; Testimony)
4. By ██████████, Appellant's new caregiver had passed her criminal background check and obtained her provider identification number. However, when the Adult Services Worker (ASW) attempted to enter payments for the new caregiver, she mistakenly entered the payments under Appellant's previous caregiver, who also happened to be the new caregiver's mother. (Exhibit A, pp 6-7; Testimony)

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5. On [REDACTED], the ASW attempted to correct the previous mistake regarding Appellant's caregiver. However, when the ASW went to enter payments for the new caregiver, the system informed her that Appellant was no longer eligible for HHS because she had been enrolled in the MI Choice Waiver Program since [REDACTED]. (Exhibit A, pp 7-8; Testimony)
6. On [REDACTED], the ASW spoke with Appellant's new caregiver and informed her that she could not process payments for Appellant's HHS because Appellant was now enrolled in the MI Choice Waiver Program. Appellant's caregiver also informed the ASW that Appellant went into a nursing home on [REDACTED]. (Exhibit A, p 6; Testimony)
7. On [REDACTED], MAHS received Appellant's Request for Hearing. (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.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Adult Services Manual 101 (12-1-2013) (hereinafter "ASM 101") describes the services available through the HHS program. ASM 101 states in part:

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

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- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive. [ASM p. 5 of 5, emphasis added].

Adult Services Manual 125 (12-1-2013) (hereinafter "ASM 125") deals with the coordination of HHS with other services. ASM 125 states in part:

MI CHOICE WAIVER

The MI Choice waiver program provides home and community-based services for individuals:

- Aged (65 and over) and disabled persons who meet the MA nursing facility level of care.
- Who require at least one MI Choice service on a continual basis.
- Meet Medicaid financial eligibility criteria; see BEM 106.

The Michigan Department of Health and Human Services, Home and Community Based Services Section, administers the waiver through contracts with organized health care delivery systems, commonly referred to as waiver agencies. For a list of the waiver agencies see **Exhibit I in BEM 106.**

Services covered under the waiver include:

- Homemaker.
- Respite care (in-home and out-of-home).
- Adult day health (or adult day care).
- Personal emergency response systems.
- Private duty nursing.

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- Personal care waiver.
- Non-medical transportation.
- Specialized medical equipment and supplies.
- Chore services.
- Home delivered meals.
- Nursing facility transition.
- Environmental accessibility adaptations.
- Community living supports.
- Counseling services.
- Fiscal intermediary services.
- Goods and services.
- Residential services.
- Training.

The Medicaid State Plan program for personal care services is home help. MA recipients seeking personal care services must first apply for home help.

MI Choice participants **cannot** receive services from both the **home help program** and the **waiver** as this is a duplication of Medicaid services. The level of care (LOC) code for the MI-Choice waiver is **22**. [ASM 125 pp. 4-5 of 12].

Likewise, the *Medicaid provider Manual, MI Choice Waiver, § 2.2.B. Freedom of Choice*, p. 3, January 1, 2015 states in part:

Qualified applicants may only enroll in one of these long-term care programs at any given time. **(revised 10/1/14)** Nursing facility, PACE, MI Choice, and Adult Home Help services cannot 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.

The Departments Adult Services Supervisor testified that Appellant's HHS payments were stopped in ██████████ because Appellant changed caregivers and the new caregiver needed to pass a background check and obtain a provider identification number. The Departments Adult Services Supervisor indicated that by ██████████, Appellant's new caregiver had passed her criminal background check and obtained her provider identification number, however, when the Adult Services Worker (ASW) attempted to enter payments for the new caregiver, she mistakenly entered the payments under Appellant's previous caregiver, who also happened to be the new caregiver's mother. The Departments Adult Services Supervisor testified that the ASW

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attempted to correct this mistake on [REDACTED], however, when the ASW went to enter payments for the new caregiver, the system informed her that Appellant was no longer eligible for HHS because she had been enrolled in the MI Choice Waiver Program since [REDACTED]. The Department's Adult Services Supervisor testified that they always intended to pay Appellant's caregiver for the services she provided, but could not make the payments once it was discovered that Appellant had enrolled in the MI Choice Waiver Program.

Appellant's caregiver testified that she has been taking care of Appellant since [REDACTED] and did not discover Appellant was in the MI Choice Waiver Program until Appellant was taken to the hospital in [REDACTED]. Up until that point, Appellant's caregiver indicated that the Department gave her every indication that she would be paid once all steps in becoming a recognized caregiver were concluded. Appellant's caregiver testified that she has since spoken to representatives from the MI Choice Waiver Program and they informed her that she should be paid through HHS, not through them.

The preponderance of reliable evidence in this case demonstrates that Appellant had an open case with the MI Choice Waiver Program as of [REDACTED]. According to the policy quoted above, Appellant cannot receive HHS when she also has an open case with the MI Choice Waiver program. Accordingly, the ASW acted within the above quoted policy from the Adult Services Manual and the Medicaid Provider manual when it denied the authorization for continued HHS. While the decision does not seem fair to Appellant's caregiver, the undersigned lacks any equitable authority and cannot order the Department to take steps that would clearly be contrary to policy. Unfortunately, under the facts as stated, the Department's decision must be sustained.

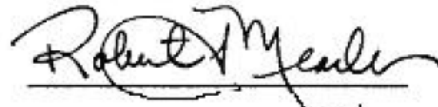
[REDACTED]
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied continued authorization for Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of
Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

RJM [REDACTED]

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.