

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

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-005605 EDW

██████████,

██████████

██████████

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 Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████, a Certified Peer Support Specialist at ██████████, appeared and testified on Appellant's behalf.¹ Appellant and ██████████, Appellant's caregiver, also testified as witnesses. ██████████, registered nurse/MI Choice Waiver Program Manager, appeared and testified on behalf of the Michigan Department of Health and Human Services' Waiver Agency, ██████████. ("Waiver Agency" or ██████████). ██████████, social worker/supports coordinator, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly deny Appellant's request for services?

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 Michigan Department of Community Health and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. On ██████████, Appellant's Adult Foster Care home referred Appellant for waiver services through ██████████. (Testimony of ██████████).

¹ Appellant's request for hearing identified a different Authorized Hearing Representative, but the original representative was unable to appear for the hearing and Appellant instead indicated on the record that she wanted ██████████ to represent her.

3. On ██████████, ██████████ staff performed a Level of Care Determination (“LOCD”) with respect to Appellant and determined that she met the criteria for waiver services by passing through Door 6 of the LOCD tool. (Testimony of ██████████).
4. However, on that day, Appellant stated that she did not want services through the Waiver Agency. (Testimony of Appellant’s representative; Testimony of ██████████).
5. Appellant also signed a “Freedom of Choice” form indicating that she refused services. (Exhibit 2, page 3).
6. On ██████████, the Waiver Agency sent Appellant written notice that services would not be implemented because Appellant refused services. (Exhibit 2, page 2).
7. On ██████████, the Michigan Administrative Hearing System (“MAHS”) received the request for hearing filed in this matter. (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 statutes, 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 Health and Human Services. Regional agencies, in this case Senior Services, 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 through the waiver program 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.
- 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, it is undisputed that Appellant meets the criteria for waiver services and services were only not implemented because Appellant declined them and signed a form indicating that she refused services.

In response, Appellant’s representative testified that Appellant has a severe mental illness, her judgment is impaired, and that she did not understand what was going on when services were offered. She also testified that Appellant does not have a legal guardian. Appellant’s representative and her caregiver both further testified that Appellant needs assistance.

Appellant has the burden of proving by the preponderance of the evidence that the Waiver Agency erred in making its decision. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information available at the time the decision was made.

Given the information available at the time of the decision in this case, the undersigned Administrative Law Judge finds that Appellant has failed to meet her burden of proof and that the Waiver Agency's decision must therefore be affirmed. It is undisputed that Appellant refused services when they were offered and, given that refusal, the denial was proper. Appellant does not have a legal guardian and had the right to refuse services.

To the extent Appellant now wishes to receive waiver services, she is free to reapply. However, regardless of what happens in the future, the decision at issue in this case must be affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Steven Kibit


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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]


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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.