

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
Phone: (877)-833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-014824 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. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████, Supports Coordinator at ██████████ appeared on the Appellant's behalf and offered testimony. ██████████ appeared as a witness for the Appellant.

██████████ LBSW, Supports coordinator, appeared and offered testimony on behalf of ██████████ (Respondent). ██████████ LMSW, Program Director for the Respondent appeared as a witness for the Respondent.

ISSUE

Did the Department's Waiver Agency properly deny Appellant's request for MI Choice Waiver 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. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
2. On ██████████ the Appellant was referred to the Respondent for MI Choice Waiver services. (Exhibit A, p 3; Testimony).
3. On ██████████, the Appellant was assessed for MI Choice Waiver services by ██████████, RN, and ██████████, LBSW at the Appellant's residence (██████████). The assessment included a review of prior medical records that indicated the Appellant suffered from

schizoaffective disorder, borderline personality disorder, dissociative identity disorder, seizure disorder, CVA, hypothyroidism, hyperlipidemia, left leg weakness and a history of lung cancer; and that the Appellant recently exhibited increased delusions and paranoia as well as suicidal and homicidal ideation which included comments that she put bleach in her grandchild's bottle and saying she wanted to stab her mother in the neck. (Exhibit A, pp 3-5; Testimony).

4. The Appellant resided in an Adult Foster Care home in ██████████ that specialized in Mental Health prior to moving to the ██████████. The Appellant was moved to the ██████████ due to abuse issues. (Exhibit A, p 3; Testimony).
5. The nursing facility level of care determination (NFLOCD) indicated the Appellant qualified for MI Choice Wavier services under Door 2, and that the Appellant's primary health issues related to her mental health. Based upon the assessment, the Respondent determined the Appellant's needs would be better met through ██████████ (formerly ██████████ ██████████ ██████████) as they have professionals who have experience treating mental health issues and that their own staff does not. (Exhibit A, p 3; Testimony).
6. On ██████████ Agency sent the Appellant an Adequate Action Notice. The notice indicated the Appellant's physical needs were resolved and that the Appellant's primary needs relating to Mental Health were better met through Community Mental Health. (Exhibit A, p 3; Testimony).
7. On ██████████ ██████████ the Michigan Administrative Hearings System received the Appellant's request for an Administrative Hearing.

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.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are

made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of Title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

42 CFR 430.10

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of community based services to the disabled, elderly and mentally handicapped populations.

Additionally, if an agency furnishes home and community-based services, as defined in §440.180, the waiver request must be limited to one of the following target groups or any subgroup thereof that the State may define: aged or disabled, or both; mentally retarded or developmentally disabled, or both; or mentally ill. [42 CFR 441.301(b)(6)]. As such, the State of Michigan operates different service programs to achieve these means.

Appendix B: Participant Access and Eligibility delineates the target groups for the MI Choice Wavier program in Michigan in accordance with 42 CFR 441.301(b)(6). The appendix indicates the target group is for the Aged or Disabled (physically) or both. The appendix does not indicate the MI Choice Waiver program is for those with a primary disability of severe mental impairment.

Application for a §1915(c) Home
and Community Based Services Waiver
July 17, 2015, pp 24, 25.

This Appellant requested services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (CMS, formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies 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)].

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2014, which provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to **elderly persons and persons with physical disabilities** who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDs). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p 1).

* * *

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 his/her 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. (p.1, emphasis added).

The MI-Choice program is targeted at the aged or disabled (physical) or both. Other programs are utilized to provide home based services for mental health disabilities. In this case, the Appellant suffers from serious mental impairments and the evidence indicates the Appellants primary medical needs related to her mental health issues. As such, it does not appear the MI-Choice program was the appropriate program for the Appellant at the time of the denial for services. At the time of denial, other programs were available to the Appellant that provided the same services and that were better situated to meet the Appellant's physical and mental health needs.

The Appellant's representatives argued, the Appellant's mental health issues have now subsided and all that remains is a need for assistance due to physical ailments.

The issue for the hearing focuses on the snapshot in time in which the Department made the decision to deny services. At that time, based upon the medical records and testimony produced, I find the Appellant was still suffering from mental health issues and her primary medical needs related to her mental health issues. If in fact the Appellant's mental health issues have subsided, the Appellant is encouraged to re-request MI-Choice Waiver services.

DECISION AND ORDER

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

[REDACTED]
Docket No. 15-014824 EDW
Decision and Order

IT IS THEREFORE ORDERED that:

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



Corey A. Arendt
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CAA/db

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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***** NOTICE *****

The Michigan Administrative Hearing System 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.