



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 15-013995
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

PROCEDURAL SUMMARY

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon Petitioner's request for a hearing.

Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED] and a telephone hearing was scheduled for [REDACTED]. On [REDACTED], Petitioner submitted a request for adjournment, which was granted by Administrative Law Judge (ALJ) Corey Arendt, and the hearing was rescheduled for [REDACTED]. On [REDACTED], Petitioner submitted a request to adjourn the [REDACTED] hearing, but the request was denied by ALJ Arendt because the request was not signed by Petitioner. An Order Denying Request for Adjournment was issued on [REDACTED]. A hearing commenced on [REDACTED] at which time Petitioner indicated that she never received the Order Denying Request for Adjournment and further indicated that in her prior adjournment request she had requested that the matter be scheduled for an in-person hearing. Based on Petitioner's assertions at the hearing, and without objection from Respondent, the matter was adjourned by ALJ Robert J. Meade to grant Petitioner's request for an in-person hearing. An Order Granting Adjournment and Request for In-Person Hearing was issued on [REDACTED], rescheduling the matter for an in-person hearing on [REDACTED].

On [REDACTED], an Appearance on Petitioner's behalf was received from Attorney [REDACTED], along with a Request for Adjournment of In-Person Hearing/Request for Prehearing Conference Call. On [REDACTED] an Order Converting Hearing to Prehearing Conference was issued. On [REDACTED], following the Prehearing Conference, an Order Following Prehearing Conference and Notice of Hearing was issued. The Order indicated that any motions were due by postmark date of [REDACTED] and replies to motions were due by postmark date of [REDACTED].

██████████. The Order also rescheduled the in-person hearing for ██████████. On ██████████, Petitioner filed a Motion for Summary Disposition. Respondent's Response to the Motion for Summary Judgment was not received until ██████████ and was not considered because it was untimely. On ██████████, Petitioner also filed a Motion to Strike Response. On ██████████, an Order Denying Motion for Summary Disposition was issued.

After due notice, a hearing was held on ██████████. Attorney ██████████ appeared on behalf of Petitioner. Petitioner, ██████████; Psychologist ██████████; ██████████, Community Liaison, ██████████; and ██████████, Medical Case Manager, ██████████ appeared as witnesses for Petitioner.

██████████, Community Services Director, appeared and testified on behalf of the ██████████, the Department's MI Choice Waiver Agency. (Waiver Agency or AAA). ██████████, Supports Coordinator appeared as a witness for the AAA. ██████████, Social Worker, Supports Coordinator; and ██████████, RN, Waiver Supervisor also appeared for AAA, but did not testify.

ISSUE

Did the Waiver Agency properly terminate Petitioner from the MI Choice Waiver Program because her needs could be met through the Department of Health and Human Services' Adult Home Help program (AHH)?

FINDINGS OF FACT

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

1. Petitioner is a ██████ year old Medicaid beneficiary, born ██████████, who has been receiving services through the MI Choice Waiver Program for 3-4 years. (Exhibit 10, p 1; Testimony)
2. The Waiver Agency is a contract agent of the Michigan Department of Health and Human Services (MDHHS) and is responsible for waiver eligibility determinations and the provision of MI Choice Waiver Services. (Exhibit 7; Testimony)
3. Petitioner suffers from the effects of a Traumatic Brain Injury (TBI) from an auto accident that occurred in ██████. Petitioner is also diagnosed with coronary heart disease, arthritis, seizure disorder, anxiety, depression, bipolar disorder, and schizophrenia. (Exhibit 2, pp 11-12; Testimony)

4. Petitioner lives alone. (Exhibit 2, p 4; Testimony)
5. Petitioner has a memory problem and her cognitive skills for daily decision making are moderately impaired as Petitioner consistently makes poor or unsafe decisions and requires cues and supervision at all time. (Exhibit 2, p 7; Testimony)
6. Petitioner's only informal support is her cousin [REDACTED], who also acts as her representative payee. Petitioner's cousin assists Petitioner with transportation on occasion, but because she works full-time and has her own family obligations, she is unable to provide Petitioner with much informal support. (Exhibit 2, pp 5, 11; Testimony)
7. Petitioner uses a cane or gait belt due to an unsteady gait and sometimes uses a wheelchair. (Exhibit A, p 14; Testimony)
8. On [REDACTED], a full assessment of Petitioner was completed by the Waiver Agency to determine continued eligibility for the MI Choice Waiver Program and Petitioner's service needs. The assessment was conducted in Petitioner's home and completed by the Waiver Agency's Supports Coordinator and Social Worker/Supports Coordinator. (Exhibit 2; Testimony)
9. At the time of Petitioner's assessment on [REDACTED], she had been experiencing audio hallucinations for the prior couple of months. Petitioner sees her psychiatrist every other month and her therapist every other week. Petitioner frequently becomes involved in verbal confrontations with others at home or out in public, which involve cursing and socially disruptive verbalizations. Petitioner also reported during the assessment that she was having suspicious thoughts and her anxiety level had increased during the past 90 days. Petitioner also reported thoughts of killing or harming herself during the weeks leading up to the assessment and had called the suicide hotline three times in the month preceding the assessment for help. (Exhibit 2, p 10; Testimony)
10. During the assessment, the Waiver Agency determined that Petitioner continued to be medically eligible for the MI Choice Waiver Program under Door 2. It was noted in the assessment that Petitioner was able to complete most of her Activities of Daily Living (ADL's) on her own but required stand by assistance with showering and bathing due to dizziness and being a fall risk. Petitioner also required assistance with Instrumental Activities of Daily Living such as transportation, money management, meal preparation and shopping. (Exhibit 2, p 19; Testimony)

11. Following the assessment, Petitioner's services of 15 hours per week of Community Living Supports (CLS), non-emergency transportation, Personal Emergency Response Unit (PERS), lawn care and snow removal services were continued. Petitioner's nursing services were closed as it was determined that Petitioner had demonstrated an ability to set up her own medications or locate an alternate source for assistance with medications. (Exhibit 2, p 20; Testimony)

12. Following Petitioner's assessment, her Plan of Care (POC) was updated by the Waiver Agency to reflect the following goals, in part:

- [REDACTED] will experience safe, independent living with inclusion in the community.
- [REDACTED] will maintain safe independent living and have adequate assistance to meet care needs.
- [REDACTED] will have no falls and will have access to assistance if a fall should occur; prevent nursing home placement.
- [REDACTED] will experience independence and have flexibility in her services to access activities in the community.

(Exhibit 1; Testimony)

13. On [REDACTED], the Waiver Agency sent Petitioner an Advance Action Notice informing her that her MI Choice Waiver services, including Community Living Supports, non-emergency transportation, snow removal, lawn care, and Personal Emergency Response Unit were being terminated because her needs could be "met by another program". (Exhibit 6; Testimony)

14. On [REDACTED], the Michigan Administrative Hearing System received the Petitioner's request for an administrative hearing. (Exhibit 24)

15. At the Prehearing Conference held on [REDACTED], the Waiver Agency clarified that the words "another program" in the Advance Action Notice meant the Adult Home Help program. (Order Following Prehearing Conference and Notice of Hearing, dated [REDACTED]; Testimony)

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.

This Petitioner is claiming 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 (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)*

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)*

Home and community based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. *42 CFR 440.180(a)*.

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).

With regard to Community Living Supports under the MI Choice Waiver Program, the Medicaid Provider Manual indicates:

4.1.H. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) facilitate an individual's independence and promote participation in the community. CLS can be provided in the participant's residence or in community settings. CLS include assistance to enable participants to accomplish tasks that they would normally do for themselves if able. The services may be provided on an episodic or a continuing basis. The participant oversees and supervises individual providers on an ongoing basis when participating in self-determination options. Tasks related to ensuring safe access and egress to the residence are authorized only in cases when neither the participant nor anyone else in the household is capable of performing or financially paying for them, and where no other relative, caregiver, landlord, community/volunteer agency, or third party payer is capable of or responsible for their provision. When transportation incidental to the provision of CLS is included, it shall not also be authorized as a separate waiver service for the participant. Transportation to medical appointments is covered by Medicaid through DHS.

CLS includes:

- Assisting, reminding, cueing, observing, guiding and/or training in household activities, ADL, or routine household care and maintenance.
- Reminding, cueing, observing and/or monitoring of medication administration.

- Assistance, support and/or guidance with such activities as:
 - Non-medical care (not requiring nurse or physician intervention) – assistance with eating, bathing, dressing, personal hygiene, and ADL;
 - Meal preparation, but does not include the cost of the meals themselves;
 - Money management;
 - Shopping for food and other necessities of daily living;
 - Social participation, relationship maintenance, and building community connections to reduce personal isolation;
 - Training and/or assistance on activities that promote community participation such as using public transportation, using libraries, or volunteer work;
 - Transportation (excluding to and from medical appointments) from the participant's residence to community activities, among community activities, and from the community activities back to the participant's residence; and
 - Routine household cleaning and maintenance.
- Dementia care including, but not limited to, redirection, reminding, modeling, socialization activities, and activities that assist the participant as identified in the individual's person-centered plan.
- Staff assistance with preserving the health and safety of the individual in order that he/she may reside and be supported in the most integrated independent community setting.
- Observing and reporting any change in the participant's condition and the home environment to the supports coordinator.

These service needs differ in scope, nature, supervision arrangements, or provider type (including provider training and qualifications) from services available in the State Plan. The differences between the waiver coverage and the State Plan are that the provider qualifications and training requirements are more stringent for CLS tasks as provided under the waiver than the requirements for these types of services under the State Plan.

CLS services cannot be provided in circumstances where they would be a duplication of services available under the State Plan or elsewhere. The distinction must be apparent by unique hours and units in the approved service plan.

*MPM, July 1, 2015 version
MI Choice Waiver Chapter, pages 13-14*

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”) addresses what services may be provided as HHS:

Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities **must** be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional**

does not prescribe or authorize personal care services.

Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

Note: If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

Example: Mr. Jones utilizes a transfer bench to get in and out of the bathtub which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

ASM 101, pages 1-3 of 5

The applicable policies of the MPM acknowledge that there may be overlap between waiver services and HHS, and that a beneficiary may qualify for both programs, in addition to any other programs the beneficiary may meet the criteria for. Moreover, in general, a beneficiary who qualifies for both programs has the freedom to choose between them:

2.2.B. FREEDOM OF CHOICE

Applicants or their legal representatives must be given information regarding all long-term care service options for which they qualify through the nursing facility LOCD, including MI Choice, Nursing Facility and the Program of All-Inclusive Care for the Elderly (PACE). Qualified applicants may only enroll in one of these long-term care programs at any given time. 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. Applicants must also be informed of other service options that do not require Nursing Facility Level of Care, including Home Health and Home Help State Plan services, as well as other local public and private service entities. The FOC form must be signed and dated by the supports coordinator and the applicant (or their legal representative) seeking services and is to be maintained in the applicant's case record.

However, the MPM also indicates that an applicant cannot be enrolled in MI Choice if his or her needs can be met through State Plan or other available services.

2.3. NEED FOR MI CHOICE SERVICES

In addition to meeting financial and functional eligibility requirements and to be enrolled in the program, MI Choice applicants must demonstrate the need for a minimum of one covered service as determined through an in-person assessment and the person-centered planning process.

Note: Supports coordination is considered an administrative activity in MI Choice and does not constitute a qualifying requisite service. Similarly, informal support services do not fulfill the requirement for service need.

An applicant cannot be enrolled in MI Choice if his/her service and support needs can be fully met through the intervention of State Plan or other available services. State Plan and MI Choice services are not interchangeable. MI Choice services differ in nature and scope from similar State Plan services and often have more stringent provider qualifications.

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home.

*MPM, July 1, 2015 version
MI Choice Waiver Chapter, page 3*

Furthermore, the MPM requires that Waiver Agencies comply with the Minimum Operating Standards for MI Choice Waiver Program Services published by the Department and Attachment K of those Operating Standards provides that persons who qualify for the Home Help program and for whom that program will fully meet their support needs do not qualify for the MI Choice program:

4.5 OPERATING STANDARDS

MDCH maintains and publishes the "Minimum Operating Standards for MI Choice Waiver Program Services" (known as the Minimum Operating Standards) document. This document defines both general and specific operating criteria for the program. All waiver agencies and service providers are subject to the standards, definitions, limits, and procedures described therein.

For each service offered in MI Choice, the Minimum Operating Standards are used to set the minimum qualifications for all direct service providers, including required certifications, training, experience, supervision, and applicable service requirements. Billing codes and units are also defined in the document.

*MPM, July 1, 2015 version
MI Choice Waiver Chapter, page 24*

C. STANDARDS OF SUPPORTS COORDINATION

Waiver agencies provide SC activities consistent with the principles listed below:

1. SCs follow the principles of PCP; including providing opportunities for participants to express goals, desires, and expectations and supporting the involvement of allies to participate in planning activities.
2. Qualified SCs perform the initial MI Choice assessment function as a team. Qualified staff includes a Registered Nurse (RN) and a Social Worker (SW), both with valid Michigan licenses to practice their profession.
3. SCs receive ongoing training and supervision, as appropriate.
4. SCs endeavor to identify and discuss all potential support and service options and emphasize participant choices and preferences.

5. The SC shall assure the participant's rights. This includes the right to participate actively in SC services including the development of the plan of service, the right to use a supports broker, the right to receive or refuse services, the right to choose providers, and the right to participate in a PCP process.

a) Every MI Choice participant signs a Freedom of Choice consent form to receive services from MI Choice. The single sign on system will generate this form for each participant once the waiver agency completes the participant's NFLOC Determination in the on-line system. Waiver agencies follow the requirements defined in the MI Choice chapter of the Medicaid Provider Manual available online at: <http://www.mdch.state.mi.us/dchmedicaid/manuals/MedicaidProviderManual.pdf>

b) Participants must be informed of the following:

(1) Services available in MI Choice, PACE, and nursing facilities. Participants or their legal representative must sign the freedom of choice form to indicate their preference for MI Choice. Waiver agencies maintain properly completed, signed, and dated forms in the participant's case record.

(2) The consent to receive MI Choice services remains in effect as long as the participant's case is open or until revoked by the participant or by a relative or other legally responsible adult only when the participant is determined legally incompetent or is physically unable.

(3) Services available through the Medicaid State Plan which may meet their needs. Examples include the Home Help Services program available through the Department of Human Services (DHS). Persons who qualify for the Home Help

program and for whom this program will fully meet their services and support needs do not qualify for the MI Choice program because they do not have the need for a waiver service.

*MI Choice Program Operating Criteria, FY 2015
Attachment K, pages 16-17
(Emphasis added)*

Requirements

* * *

6. Waiver agencies enroll applicants the waiver agency determines eligible for MI Choice services, who consent to participate in MI Choice, and for whom the other community-based services, such as the Home Help Services program will not fully meet the service and support needs of the applicant.

*MI Choice Program Operating Criteria, FY 2015
Attachment K, pages 26-27
(Emphasis added)*

E. USE OF OTHER PAID SERVICES

Before authorizing MI Choice services for a participant, the waiver agency must take full advantage of services and supports in the community that are available to the participant and paid for by other fund sources, including third party reimbursements and the Medicaid State Plan services. MI Choice funding is the payment source of last resort. Two exceptions are Physical Disability Services (PDS) funds and OSA in-home services funds. These are extremely limited fund sources and would be quickly exhausted if used for MI Choice participants. (Note: An executive order cut PDS funds from the FY 2010 budget. MDCH does not expect the Governor to reinstate these funds for FY 2014.)

*MI Choice Program Operating Criteria, FY 2015
Attachment K, page 48
(Emphasis added)*

The Waiver Agency's Community Services Director testified that she reviewed the way Petitioner was utilizing her services and determined that Petitioner's needs could be met by the AHH program. The Waiver Agency's Community Services Director reviewed Petitioner's Home Health Aide Activity Notes between [REDACTED] and [REDACTED] and noted that Petitioner was only using services intermittently. (Exhibit A). The Waiver Agency's Community Services Director also noted that Petitioner did not use any in-home services between [REDACTED] and [REDACTED]. (Exhibit B). The Waiver Agency's Community Services Director indicated that Petitioner's Service Authorization Summary shows that Petitioner was receiving services on a flexible basis, was able to manage the scheduling of those services on her own, and frequently cancelled services. (Exhibit E). The Waiver Agency's Community Services Director testified that Petitioner's Progress Notes also show instances of cancelling services, as well as numerous issues Petitioner was having with her providers. (Exhibit F).

Petitioner's Supports Coordinator testified that she worked with Petitioner for about 1.5 years. Petitioner's Supports Coordinator indicated that Petitioner made progress over that time and she felt that Petitioner could manage her own services and that her needs could be met by the AHH program. Petitioner's Supports Coordinator testified that Petitioner's needs included washing her hair, preventing falls, as well as community inclusion and socialization. Petitioner's Supports Coordinator indicated that on community outings, Petitioner might walk around the mall or go to McDonalds. Petitioner's Supports Coordinator also indicated that Petitioner liked to use the internet and took college classes. Petitioner's Supports Coordinator opined that Petitioner was able to manage her own care as evidenced by her flexible schedule, her attendance at college and her volunteer activities. Petitioner's Supports Coordinator testified that she observed Petitioner walking numerous times without the use of an assistive device, although she did sometimes observe Petitioner using a cane. Petitioner's Supports Coordinator also noted that Petitioner was involved with the Freedom Works program through Community Mental Health, which also got her out into the community. Petitioner's Supports Coordinator also indicated that Petitioner's records indicated that she went without any in-home assistance 3-4 days every week. Petitioner's Supports Coordinator agreed that Petitioner often had issues with her aides and that her aides attended college classes with her in the beginning. Petitioner's Supports Coordinator also admitted that self-determination is available for those receiving MI Choice services and that she was aware of several in her agency who used self-determination.

Petitioner's Psychologist testified that he has known Petitioner since [REDACTED] when he completed a psychological assessment, but has not treated her since that time. Petitioner's Psychologist indicated that he has spoken to Petitioner on the telephone periodically since [REDACTED]. Petitioner's Psychologist reviewed a [REDACTED] letter he authored on Petitioner's behalf. (Exhibit 4). Petitioner's Psychologist opined that Petitioner needs assistance with interacting with the general public as she often feels slighted or confused, becomes easily upset or is overly elaborative during such interactions. Petitioner's Psychologist opined that it would be difficult for Petitioner to take care of herself without her current services in place because there are issues with

safety, decision making, organization, and planning. Petitioner's Psychologist indicated that Petitioner does not really have any family to rely on and that it would be unhealthy for Petitioner to rely on family even if they were available. Petitioner's Psychologist testified that Petitioner's conditions affect her relationships with her aides and it would not be unlikely for those issues to lead to Petitioner shutting down and cancelling services.

In her testimony, Petitioner read a statement that she prepared in response to questions posed by her attorney. (Exhibit 25). Petitioner further testified that she has hired [REDACTED] on her own to assist her with her medical appointments and medical treatment. Petitioner indicated that she is no longer allowed to participate in [REDACTED] through CMH and is no longer attending college. Petitioner also indicated that she has not done any volunteering in over a year, but did indicate that she does some calling on behalf of CMH.

The Community Liaison at [REDACTED] testified that she works with folks who have suffered traumatic brain injuries and was certified in the past as a certified brain injury specialist. The Community Liaison at [REDACTED] indicated that Petitioner began working with her organization in [REDACTED]. The Community Liaison at [REDACTED] indicated that Petitioner has difficulty moving quickly, uses a walker, a cane or a wheelchair, needs assistance with bathing and meal preparation and often has to use her PERS. The Community Liaison at [REDACTED] testified that there is no evidence that Petitioner can be independent in the community as she becomes very agitated when interacting with members of the public. The Community Liaison at [REDACTED] testified that Petitioner contacts her often, usually once or twice a day, for assistance. The Community Liaison at [REDACTED] testified that sometimes those calls have to do with issues Petitioner is having with one of her aides, and she works with Petitioner to resolve the problems. The Community Liaison at [REDACTED] admitted that Petitioner usually uses their services in her home 3 days per week, but sometimes 4 days per week.

Petitioner's Medical Case Manager at [REDACTED] testified that she has known Petitioner for approximately 10 years and began working with her again in [REDACTED] when her MI Choice Waiver Services were being terminated. Petitioner's Medical Case Manager indicated that her staff attend physician appointments with Petitioner and assist her with any medical issues. Petitioner's Medical Case Manager testified that Petitioner has a TBI, resulting in cognitive deficits, and Petitioner needs assistance with home care, medical appointments and psychiatric interventions. Petitioner's Medical Case Manager indicated that Petitioner has memory issues, anxiety, and often becomes frustrated with others. Petitioner's Medical Case Manager testified that Petitioner is not able to prioritize or problem solve and Petitioner calls her often with questions about what to do in various situations. Petitioner's Medical Case Manager testified that Petitioner does not have much in the way of informal supports and that it would be unsafe for Petitioner to be on her own.

Here, the Waiver Agency argues that Petitioner's needs can be met by the AHH program as evidenced by the fact that Petitioner only uses in-home services 3 days per week, is able to manage and arrange her own care and often cancels scheduled services. The Waiver Agency argues that Petitioner must be able to be safe in her own home and the community on her own if she is only utilizing services 3-4 days per week.

Petitioner argues that her needs cannot be met by the AHH program because CLS services relating to community inclusion, supervising, monitoring, reminding, guiding, teaching and encouraging are not available under the AHH program. Petitioner also argues that she cannot receive non-emergency transportation under the AHH program, nor can she receive snow removal or lawn care services under the AHH program.

Having considered that parties' arguments in full, and the evidence presented, it is determined that at the time Petitioner's MI Choice Waiver services were terminated in [REDACTED], Petitioner's needs could not be met by the AHH program. As Petitioner correctly points out, Petitioner's goals in her POC include community inclusion as well as supervision, two services that are not available through the AHH program. At Petitioner's assessment, it was also found that Petitioner requires a PERS unit because she is at risk for falling and a PERS unit is not available through the AHH program. Finally, it was also determined at Petitioner's last assessment that she requires snow removal and lawn care, two additional services that are not available through the AHH program.

With that said, it is clear that many of Petitioner's needs can be met through the AHH program. For instance, Petitioner's needs with regard to bathing, shopping, meal preparation, and housework could be met through the AHH program. However, while this might affect the level of CLS Petitioner receives through the Waiver Agency, the Waiver Agency would still be responsible for providing CLS services to Petitioner to meet her goals of community inclusion and her needs regarding supervising, monitoring, reminding, guiding, teaching, encouraging, snow removal, lawn care and PERS so long as those needs and goals continue to appear in her assessment and Plan of Care. If the Waiver Agency determines in the future that those goals can be met by other programs or by informal supports, the Waiver Agency must document those findings in Petitioner's assessment and Plan of Care before terminating her services. The Waiver Agency must also send proper notice to Petitioner indicating with some specificity how Petitioner's goals and needs can be met by other programs or informal supports.

Therefore, it is determined that Petitioner has met her burden of proving by a preponderance of evidence that the Waiver Agency improperly terminated her services.

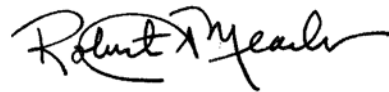
DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Within 10 days of the issuance of this Decision and Order, the Waiver Agency must certify that it has complied with this Order by maintaining Petitioner's services at previously authorized levels.



RM/cg

Robert Meade

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

Counsel for Appellant

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS-Location Contact

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]

Community Health Rep

[REDACTED]