



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-000029
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED], Petitioner's husband, appeared and testified on Petitioner's behalf. Petitioner was also present on her own behalf. [REDACTED], registered nurse/manager, appeared and testified on behalf of the Department of Health and Human Services' Waiver Agency, the [REDACTED] [REDACTED] [REDACTED]. [REDACTED] [REDACTED], Manager of Eligibility Department, and [REDACTED], Information and Assistance Manager, also testified as witnesses for Respondent.

ISSUE

Did Respondent properly deny Petitioner'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. Respondent is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. On [REDACTED] [REDACTED] [REDACTED], Petitioner's representative applied for waiver services through Respondent on Petitioner's behalf. (Testimony of Petitioner's representative).
3. In response, Respondent informed Petitioner's representative that

Petitioner needed an income to qualify for the program and it advised him to call back when she had one. (Testimony of Petitioner's representative; Testimony of Respondent's Information and Assistance Manager).

4. No written notice of denial was ever sent to Petitioner. (Testimony of Petitioner's representative; Testimony of Respondent's Information and Assistance Manager).
5. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter regarding the denial of Petitioner's request for services. (Exhibit 1, page 1).
6. On [REDACTED], Respondent completed an intake with Petitioner. (Testimony of Respondent's representative).
7. An assessment is also scheduled for [REDACTED] (Testimony of Petitioner's representative; Testimony of Respondent's representative).

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. 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.

Petitioner is seeking 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 to the Michigan Department of Health and Human Services. Regional agencies, in this case Respondent, 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.

Here, Petitioner applied for services through Respondent and was told she did not qualify because she did not have an income. Respondent also advised her representative to call back when she did have an income.

In support of that action, Respondent's witnesses testified that Respondent's actions did not constitute a denial as Petitioner was going to call back, and that it therefore never sent out a written notice of denial. They also noted that Petitioner subsequently called back and is now scheduled for an assessment. They further testified that the applicable guidelines provide that applicants must have some income to qualify for the program.

In response, Petitioner's representative testified that he was told that, in response to Petitioner's application, Respondent would hold off on any intake session until Petitioner had an income. He also testified that he only received that information over the telephone and that Petitioner never received written notice of Respondent's decision. Petitioner's representative further testified that he has never seen any requirement in writing that Petitioner must have an income and that, while Petitioner does have an upcoming assessment, they would also be seeking reimbursement for the money they put out after the improper denial.

Petitioner bears the burden of proving by the preponderance of the evidence that Respondent erred.

Given the record in this case, Petitioner has met that burden of proof and Respondent's decision must therefore be reversed. While Respondent asserts that it did not deny Petitioner's request for services, it clearly did so given that Petitioner requested services and was refused them on the basis of some unidentified and non-provided policy. Moreover, given that Respondent denied Petitioner's request for services, it was required to send written notice of its decision. See Medical Provider Manual, October 1, 2015 version, MI Choice Waiver Chapter, page 39. Moreover, any such Adequate Action Notice must conform with the fair hearings requirements found in 42 CFR 431.210, which requires that the notice contain, among other things, a statement of what action is to be taken; the reasons for the intended action; and the specific regulations that support, or the change in Federal or State law that requires, the action. See MPM, MI Choice Waiver Chapter, pages 39-40; 42 CFR 431.210. Respondent undisputedly failed to send the required notice in this case; it erred by doing so; and its actions must be reversed.

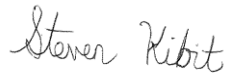
To the extent Petitioner requests reimbursement for money she and her husband have spent on care following the denial, their request must be denied as, even if Respondent's actions were improper, that does not mean that Petitioner met the criteria for the program and she had never been properly assessed. Accordingly, the undersigned Administrative Law Judge will only order that Respondent reassess Petitioner's request for services at this time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent erred in denying Petitioner's request for services.

IT IS THEREFORE ORDERED that

The Respondent's decision is **REVERSED** and it must initiate a reassessment of Petitioner's request for services.



SK/db

Steven Kibit
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

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

Community Health Rep

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]