



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: May 2, 2016  
MAHS Docket No.: 16-002385  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Corey Arendt

**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]. [REDACTED] appeared on behalf of the Petitioner. No one appeared on behalf of the [REDACTED] (Department). Numerous attempts were made to contact the Department at the number found on the hearing summary cover sheet as well as on the Department's letterhead found on the [REDACTED] Advance Action Notice. Voice messages were left with [REDACTED] (Department Contact) to contact the Michigan Administrative Hearings System (MAHS) if the Department wished to participate and further indicated the hearing would proceed in the Department's absence.

**Exhibits**

Petitioner	A – Advance Action Notice
Department	None

**ISSUE**

Did the Department properly cancel the Petitioner's Community Support Services, [REDACTED], LPN, [REDACTED], Incontinence Products, [REDACTED], Meals, [REDACTED], Case Management, [REDACTED], Lifeline, [REDACTED] ?

### **FINDINGS OF FACT**

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

1. On [REDACTED], the Department sent the Petitioner an Advance Action Notice. The notice indicated the Department was cancelling the Petitioner's Community Support Services/[REDACTED], LPN/[REDACTED], Incontinence Products/[REDACTED], Meals/[REDACTED], Case Management/[REDACTED], Lifeline/[REDACTED] effective [REDACTED].
2. On [REDACTED], the Petitioner requested a hearing regarding the [REDACTED] Advance Action Notice.

### **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 Appellant 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 Health and Human Services (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)*

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2015, 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).

The Department did not appear and did not offer any testimony or evidence as to why or how they determined the Petitioner was no longer eligible for Community Support Services, [REDACTED], LPN/[REDACTED], Incontinence Products/[REDACTED], Meals/[REDACTED], Case Management/[REDACTED], Lifeline/[REDACTED]. As such, I could not determine whether or not the Department's actions were in conformity with the applicable laws and policies and therefore must reverse the Department's actions.

**DECISION AND ORDER**

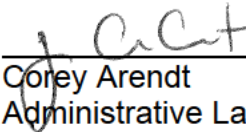
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly cancelled the Petitioner's Community Support Services, [REDACTED], LPN/[REDACTED], Incontinence Products/[REDACTED], Meals/[REDACTED], Case Management/[REDACTED], Lifeline/[REDACTED].

**IT IS THEREFORE ORDERED** that

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

The Department is to initiate the process of re-determining the Petitioner's eligibility for Community Support Services, [REDACTED], LPN, [REDACTED], Incontinence Products, [REDACTED], Meals, [REDACTED], Case Management, [REDACTED], Lifeline, [REDACTED] with an effective date of [REDACTED] and issue retroactive benefits if otherwise eligible and qualified.

CA [REDACTED]

  
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Corey Arendt  
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

**Community Health Rep**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]

**Petitioner**

[REDACTED]