



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 26, 2016
MAHS Docket No.: 16-013890
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 Petitioner's request for a hearing.

After due notice, a hearing was held on October 24, 2016. Attorney [REDACTED] appeared on Petitioner's behalf. [REDACTED] Petitioner's father and guardian and [REDACTED], family friend, appeared as witnesses.

[REDACTED], Director, represented the Department's waiver agency, [REDACTED] (Waiver Agency or [REDACTED]). [REDACTED], RN, Supports Coordinator; [REDACTED], Social Worker Case Manager; [REDACTED], RN Supervisor; [REDACTED], Care Coordinator, [REDACTED]; and [REDACTED]; Department Specialist, Department of Health and Human Services; appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Petitioner's services due to a violation of MI Choice Participant Responsibilities?

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. (Exhibit 1; Testimony)
2. The Waiver Agency must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department. (Exhibit 1; Testimony)

3. Petitioner is a [REDACTED] Medicaid beneficiary, born [REDACTED] who has been receiving services through the Waiver Agency. Petitioner is diagnosed with seizure disorder, traumatic brain injury, anxiety, bi-polar disorder and antibiotic resistant infection. (Exhibit P, p 16; Testimony)
4. Petitioner suffered a traumatic brain injury as the result of an auto accident. Petitioner is not able to make any decisions for himself and, due to his severe cognitive impairment, cannot be left alone. Petitioner has a history of wandering away from the home and does not have the ability to comprehend danger or make good decisions. Petitioner can become physically and verbally aggressive at times, especially when frustrated. (Exhibit P, pp 12, 14; Testimony)
5. Petitioner is ambulatory and can usually transfer on his own, but needs assistance with his other Activities of Daily Living (ADL's) and all Instrumental Activities of Daily Living (IADL's). Petitioner also sometimes requires assistance with transferring in the morning. (Exhibit P, pp 21-23; Testimony)
6. Petitioner lives with his father in a single family home. (Exhibit P, p 11; Testimony)
7. Petitioner's father is his primary informal support and also serves as Petitioner's court appointed guardian and representative payee. (Exhibit P, p 9; Testimony)
8. Petitioner's last assessment was conducted on [REDACTED] and his Plan of Care was completed shortly thereafter. Petitioner was authorized to receive 16 hours of Community Living Supports (CLS) per day, as well as mileage reimbursement and supports coordination. (Exhibits A, D; Testimony)
9. [REDACTED] Healthcare has been Petitioner's provider of in-home services for approximately three years. Between [REDACTED], [REDACTED] caregivers reported approximately nine separate incidents where Petitioner or Petitioner's father acted in a manner that was verbally or physically abusive towards the caregivers. For example:
 - On [REDACTED], a caregiver reported that Petitioner's father would not let the caregiver and Petitioner out of the bathroom for over an hour because Petitioner's father wanted Petitioner to go to the bathroom. (Exhibit 1, p 92)
 - On [REDACTED], a caregiver reported that Petitioner's father cussed and screamed at her so much she felt threatened and decided to leave the home. (Exhibit 1, p 91)

- On [REDACTED], a caregiver reported that Petitioner's father threatened to hurt her with a tire iron and threatened to take her whole family out. The caregiver also reported that Petitioner's father mentioned getting a gun and killing himself. The caregiver further reported that she was worried about Petitioner's health because Petitioner's father would forget to give him his medication. (Exhibit 1, p 89)
 - On [REDACTED], a [REDACTED] Care Coordinator called Adult Protective Services on Petitioner's father because he had been yelling at another caregiver and called her a "f***ing bitch". (Exhibit 1, p 87)
 - On [REDACTED], a caregiver reported that Petitioner got angry and pinned her against the wall and elbowed her and hit her. (Exhibit 1, p 84)
 - On [REDACTED], a caregiver reported that Petitioner backed her up into the bathroom door and jammed his elbow in her face. The caregiver reported that it was so hard her eyes started to water and she felt like she was going to pass out. (Exhibit 1, p 83)
 - On [REDACTED], a caregiver reported that both Petitioner and Petitioner's father were physically abusive towards her. (Exhibit 1, p 82)
 - On [REDACTED], a caregiver reported that Petitioner's father was making inappropriate actions towards her by rubbing her shoulder and back while she was in the kitchen before pulling her closer and asking her to kiss him. (Exhibit 1, p 81)
 - On [REDACTED], a caregiver reported that Petitioner's father was verbally abusive towards her and continued to cuss at her while following her out to her car. (Exhibit 1, p 80)
10. On several occasions, the [REDACTED] staff spoke to Petitioner's father following these incidents regarding his need to act appropriately and respectfully towards staff. (Exhibit 1, pp 85, 88, 90; Testimony)
11. During the three years that [REDACTED] [REDACTED] served Petitioner, Petitioner's father made numerous complaints to the Waiver Agency and [REDACTED] regarding staffing issues, including staff failing to show up, staff leaving early, and the provider being unable to provide staffing. (Exhibit 1, pp 12-69; Testimony)

12. Waiver Agency staff also spoke to Petitioner's father on numerous occasions about his behavior and Petitioner's behavior. Petitioner was advised by Waiver Agency staff that if the behaviors continued, the Waiver Agency could not guarantee that they would be able to continue to staff the home. (Exhibit 1, pp 12-69; Testimony)
13. The Waiver Agency provides to all participants in the program a copy of the MI Choice Waiver Participant Handbook. Petitioner's father acknowledged receipt of the handbook in [REDACTED] (Exhibit 1, pp 94-99; Testimony)
14. In [REDACTED], Petitioner's father contacted [REDACTED], Department Specialist, Michigan Department of Health and Human Services regarding complaints he had with the service Petitioner was receiving from the Waiver Agency and Mercy Plus Healthcare. While investigating the complaint, [REDACTED] reviewed the State's Critical Incident database and noted a number of complaints relating to inappropriate behavior by both Petitioner and his father towards caregivers. After consulting with her supervisor and director, [REDACTED] authored a letter to the Waiver Agency in which she instructed the Waiver Agency to terminate Petitioner's services due to Petitioner's failure to provide a safe home for his caregivers to work in. (Exhibit 1, p 11; Testimony)
15. On [REDACTED], the Waiver Agency phoned Petitioner's father and informed him that Petitioner's services were being terminated. The Waiver Agency also mailed Petitioner an Advanced Action Notice indicating that Petitioner's services were being terminated due to failure to comply with responsibilities within the Program. Specifically, the notice indicated:

As listed in the MI-Choice Medicaid Waiver handbook under participant rights and responsibilities the participant must provide a safe and non-threatening (sic) environment for the people who are helping them. It has been determined that you have been unable to provide such an environment, therefore, services are being terminated as directed by Michigan Department of Health & Human Services. [REDACTED] is no longer willing to provide services as of this day, September 28, 2016. At this time, Region VII has no other agency to provide the services during the appeals process.

(Exhibit L; Testimony)

16. On [REDACTED], the Michigan Administrative Hearing System received Petitioner's request for hearing. (Exhibit 1).
17. On [REDACTED], Petitioner filed a Motion requesting a telephone pre-hearing conference in order to address the issue of continuation of services during the pendency of the appeal. A telephone pre-hearing conference was held on [REDACTED] and an Order Regarding Continuation of Services Pending Appeal was issued on [REDACTED]. The Order indicated that Respondent was to provide services to Petitioner during the pendency of the appeal, provided Petitioner and his father could provide a safe environment for the caregivers.
18. The Waiver Agency contacted all of its available service providers following the telephone prehearing conference and could not find a provider willing to serve Petitioner while the appeal was pending. (Exhibit 1, pp 100-107)

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 has been receiving 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)*

Medicaid policy in Michigan is contained in the Medicaid Provider Manual (MPM). With regard to the MI Choice Waiver program, the MPM provides, in part:

SECTION 1 - GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Health and Human Services (MDHHS) 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 & Medicaid Services (CMS) under section 1915(c) and section 1915(b) of the Social Security Act. MDHHS carries out its waiver obligations through a network of enrolled providers that operate as Prepaid Ambulatory Health Plans (PAHPs). These entities are commonly referred to as waiver agencies. MDHHS 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. MDHHS will not enact any provision to the MI Choice program that prohibits or inhibits a participant's access to a person-centered plan of service, discourages participant direction of services, interferes with a participant's right to have grievances and complaints heard, or endangers the health and welfare of a participant. The program must monitor and actively seek to improve the quality of services delivered to participants. Safeguards are utilized to ensure the integrity of payments for waiver services and the adequacy of systems to maintain compliance with federal requirements.

Waiver agencies are required to provide oral and written assistance to all Limited English Proficient applicants and participants. Agencies must arrange for translated materials to be accessible or make such information available orally through bi-lingual staff or through the use of interpreters.

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 their 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 requires at least two waiver services, one of which must be Supports Coordination, 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.

*Medicaid Provider Manual
MI Choice Waiver Chapter
July 1, 2016, pp 1-2*

The Waiver Agency provides to all participants in the program a copy of the MI Choice Waiver Participant Handbook. Page 5 of the handbook is titled, “Your Responsibilities” and indicates, among other things that participants are required to:

Make sure your home is safe and non-Threatening for people who are helping you. This includes:

- Being respectful to workers in your home.
- Not verbally or physically abusing the people trying to help you.
- Not using profane or offensive language toward the people who are trying to help you.

- Keeping pets outside or otherwise secure so that your worker can give you the services and supports you need.
- Being a responsible gun or weapon owner. This means that all weapons will not pose a threat, intended or unintended, real or implied, to the people helping you.
- Making sure there are no illegal or illicit activities happening in your home. Some of the people who come to your home will have to report these things to Adult Protective Services.

(Exhibit A, p 74)

██████████'s Care Coordinator testified that a care coordinator is on call at ██████████ 24/7 and would be the person to receive calls from workers who had difficulties on the job. In the present case, ██████████ Care Coordinator discussed calls from caregivers in Petitioner's home where a worker was locked in the bathroom, were yelled and cussed at, were threatened by a tire iron, and had their butt grabbed. ██████████ Care Coordinator reported that these caregivers often left Petitioner's home hysterical and crying because of the treatment received there. ██████████ Care Coordinator indicated that they have been Petitioner provider since ██████████. ██████████ Care Coordinator testified that when they received a complaint from a caregiver at Petitioner's home, they would contact the Waiver Agency by telephone to report the incident. ██████████'s Care Coordinator indicated that she only met Petitioner once when one of the caregivers brought him to the office. ██████████ Care Coordinator testified that having 2 caregivers with Petitioner would make the job more manageable. ██████████ Care Coordinator indicated that she never met Petitioner's father in person, but had a good rapport with him when they spoke on the phone. ██████████ Care Coordinator testified that she tried hard to make sure Petitioner got the services he needed. ██████████'s Care Coordinator indicated that ██████████ were Petitioner's primary caregivers and seemed to get along well with Petitioner and his father. ██████████ Care Coordinator testified that the complaints referred to here occurred when other caregivers were sent to Petitioner's home. ██████████ Care Coordinator testified that her agency had probably sent 30-50 different caregivers to Petitioner's home over the past three years.

The MDHHS Department Specialist testified that she had two separate phone conversations with Petitioner's father. During the first conversation, the MDHHS Department Specialist indicated that Petitioner's father raised concerns regarding Petitioner not receiving all of the services he was allocated and the Waiver Agency Director not listening to him. The MDHHS Department Specialist indicated that she informed Petitioner's father that she would look into the matter and then call him back. The MDHHS Department Specialist testified that she then reviewed the Critical Incident

database and spoke to the Waiver Agency Director before speaking to Petitioner's father the second time. The MDHHS Department Specialist indicated that during the second conversation, Petitioner's father had done a complete 360 and was very demanding and aggressive. The MDHHS Department Specialist testified that Petitioner's father indicated that the Waiver Agency was required to provide Petitioner with specialized care for persons with TBI, but that she informed him that the Waiver Agency is not set up to provide such specialized care. The MDHHS Department Specialist also indicated that Petitioner's father informed her that Petitioner's doctors at [REDACTED] had indicated that Petitioner required affection and that his caregivers should be giving him that affection. The MDHHS Department Specialist testified that she informed Petitioner's father that it would not be appropriate for caregivers to provide that kind of affection to Petitioner.

The MDHHS Department Specialist testified that she became concerned regarding Petitioner's statements regarding affection in light of the incidents she reviewed in the Critical Incident database and became very concerned about the safety of Petitioner's caregivers. The MDHHS Department Specialist indicated that she reviewed the situation with her supervisor and the director and the decision was made to inform the Waiver Agency to terminate Petitioner's services for failure to provide a safe working environment. The MDHHS Department Specialist acknowledged that Petitioner requires services, but was concerned about worker safety. The MDHHS Department Specialist admitted that she did not review Petitioner's assessments of Person Centered Plan, had never met Petitioner or his father, had not been to Petitioner's home, nor met any of Petitioner's caregivers. The MDHHS Department Specialist testified that even if services are reinstated, there are no caregivers willing to provide services at this time. The MDHHS Department Specialist also opined that it appeared that Petitioner required services beyond what the Waiver Agency could provide and had been offered alternatives, such as placement in an Adult Foster Care (AFC) home or self-determination, where Petitioner's father would be responsible for hiring and training all of Petitioner's workers.

Petitioner's RN Supports Coordinator testified that she was Petitioner's supports coordinator for approximately 3 years before asking to be taken off the case in [REDACTED]. Petitioner's RN Supports Coordinator indicated that Petitioner's case was a challenging one and she felt it would be best for someone to take a fresh look at it. Petitioner's RN Supports Coordinator testified that she had offered Petitioner's father other services in the past in order to assist with Petitioner's care, but those services, such as self-determination, medication set-up, door alarms, a personal emergency response unit, and a bed alarm were denied by Petitioner's father. Petitioner's RN Supports Coordinator testified that she also offered other housing options, such as an assisted living home or an AFC home, but those options were also denied by Petitioner's father. Petitioner's RN Supports Coordinator testified that she received complaints from Agencies over the years about Petitioner and his father and made referrals to Adult Protective Services.

Petitioner's RN Supports Coordinator admitted that she has never witnessed any of Petitioner's behavioral problems and that during assessments, Petitioner never seemed agitated or upset. Petitioner's RN Supports Coordinator testified that she never hugged Petitioner, but that he would sometimes get close and place a hand on her shoulder. Petitioner's RN Supports Coordinator testified that she would always go to assessments at Petitioner's home with a social worker and that a caregiver was usually also there. Petitioner's RN Supports Coordinator testified that Petitioner's father was always pleasant and cooperative with her, but that she would not have felt comfortable going to Petitioner's home alone because of reports from the agencies servicing Petitioner. Petitioner's RN Supports Coordinator indicated that Petitioner's father did one time leave her a voice mail message where he cursed. Petitioner's RN Supports Coordinator testified that she does not talk to caregivers directly, but would hear about the complaints through their supervisors or coordinators. Petitioner's RN Supports Coordinator testified that she offered to meet with the agency and Petitioner's father after the complaints, but the meeting never occurred. Petitioner's RN Supports Coordinator indicated that Petitioner's father had contacted the Waiver Agency numerous times over the years regarding staffing concerns and that she would always offer to refer Petitioner to another agency, but that Petitioner's father chose to stay with [REDACTED]. Petitioner's RN Supports Coordinator testified that it is common for there to be high turnover at staffing agencies.

Petitioner's Social Worker Supports Coordinator (SWSC) testified that she has worked with Petitioner on and off for about 2 years. Petitioner's SWSC testified that Petitioner likes trucking, loves his father, likes to be social and is very affectionate. Petitioner's SWSC reviewed Petitioner's latest assessment and noted that Petitioner is severely impaired with decision making and cannot be left alone. Petitioner's SWSC noted that Petitioner can become aggressive when he is not getting attention and has an unsteady gait, but can ambulate and transfer on his own. Petitioner's SWSC testified that Petitioner was eligible for Waiver services under Door 1 and Door 2. Petitioner's SWSC indicated that she has never observed any behavioral problems with Petitioner and that the services currently authorized are still medically necessary. Petitioner's SWSC testified that Petitioner has difficulty staying on tasks and likes to be up and moving. Petitioner's SWSC testified that an RN would accompany her to Petitioner's assessments and that a caregiver would likely be in the home. Petitioner's SWSC testified that Petitioner's father was difficult to get information from at times and could become agitated quickly. Petitioner's SWSC testified that [REDACTED] did not call the Waiver Agency about any incidents in [REDACTED] and that the last call was on [REDACTED] when Petitioner's father called to say the caregiver appeared to be high on drugs. Petitioner's SWSC testified that she never saw the incident reports completed by [REDACTED] prior to the hearing. Petitioner's SWSC testified that Petitioner's father gets angry when caregivers try to redirect Petitioner. Petitioner's SWSC testified that Petitioner's father has not been responsive to other services offered, such as door alarms, an AFC home, or assisted living. Petitioner's SWSC testified that she was concerned when she learned Petitioner's case was being closed because Petitioner needs services, but workers also need to be safe.

Petitioner's father testified that Petitioner has a traumatic brain injury from a car accident in [REDACTED]. Petitioner's father testified that Petitioner had one caregiver for over 2 years and she was very affectionate with Petitioner. Petitioner's father indicated that Petitioner's other two caregivers, [REDACTED], are also very good and have been with Petitioner for a long time. Petitioner's father testified that problems would arise when the agency sent other caregivers who were not experienced enough to care for Petitioner. Petitioner's father indicated that there was a huge problem with turnover from these other caregivers and some would leave as soon as they saw Petitioner. Petitioner's father indicated that one time half of Petitioner's OxyContin liquid was missing from the refrigerator and one time a jar of his pennies went missing. Petitioner's father indicated that he could not have locked anyone in the bathroom because you cannot lock the bathroom from the outside. Petitioner's father testified that the worker he complained about being high on the job was stumbling when she got out of the car and said she would get back at him after he called the agency on her. Petitioner's father testified that the Waiver Agency is always pushing to put Petitioner in a home. Petitioner's father testified that he never threatened anyone with a tire iron or mentioned a gun.

Petitioner's father testified that [REDACTED], another Waiver Agency in the area, is willing to come in and serve Petitioner. Petitioner's father indicated that his spouse died in [REDACTED] and that Petitioner still sometimes stands by the door and waits for her. Petitioner's father testified that this seems like a witch hunt to him and he never heard about any of these allegations until his son's services were terminated. Petitioner's father testified that he does not think that either he or his son did anything wrong. Petitioner's father testified that his health is fine outside of a few stents put into his heart. Petitioner's father indicated that once when he was in the hospital, the caregiver on duty had her boyfriend in the home even after he told her it was not okay. Petitioner's father indicated that he was never told about the possibility of adult day care. Petitioner's father testified that he never tried to kiss a caregiver and never asked a caregiver for a kiss. Petitioner's father testified that Petitioner does have mood swings and does respond differently to aides that are not good to him. Petitioner's father testified that he was informed of the termination when the Waiver Agency called him on [REDACTED]. Petitioner's father indicated that the Waiver Agency was apologetic and indicated that the decision was made by the State of Michigan. Petitioner's father indicated that he was told that if he had difficulty caring for Petitioner he should take him to the emergency department at the local hospital.

Petitioner's family friend testified that she has known Petitioner and his father since [REDACTED] and has helped Petitioner's father care for Petitioner since Petitioner's services were terminated. Petitioner's family friend indicated that Petitioner is a handful and that Petitioner's father can get frustrated at times caring for Petitioner, but that he is not angry. Petitioner's family friend testified that she has observed incidents where caregivers have not appeared for their scheduled shifts and that this causes stress and difficulty for Petitioner's father. Petitioner's family friend indicated that Petitioner's father has health conditions of his own and she worries what will happen to Petitioner when

Petitioner's father is not able to care for him. Petitioner's family friend testified that she got to know Petitioner's caregivers [REDACTED] before they left, they were both wonderful, and Petitioner would light up when they arrived. Petitioner's family friend testified that Petitioner is happy living at home and she feels comfortable in his presence.

Petitioner bears the burden of proving, by a preponderance of the evidence that the Waiver Agency erred in terminating his services. Based on the evidence presented, Petitioner has failed to meet that burden. Here, it is clear that Petitioner and his father failed to provide a safe and non-threatening environment for those providing services. The testimony and exhibits provided by the Waiver Agency show an overwhelming amount of evidence that Petitioner's father has used profane and offensive language, been verbally abusive to care providers and has not treated his workers with respect and dignity. There is also some evidence that Petitioner's father may have acted in a sexually suggestive manner towards a caregiver and asked the caregiver to kiss him. Evidence also shows that on at least two occasions, Petitioner was physically abusive towards his caregivers. Based on this evidence, the termination of Petitioner's services was proper.

Petitioner argues that the evidence against him is unreliable because it is based on hearsay. However, in an administrative hearing, evidence of a type commonly relied upon by reasonably prudent persons in the ordinary course of business is admissible. MCL 24.275. The undersigned interprets this section of the Administrative Procedures Act to include hearsay of the type included in the Waiver Agency's exhibits. The sheer volume of the allegations is enough to substantiate their reliability. Furthermore, the complaints in question were documented in a database at the provider's business when received and the complaints were further documented by the Waiver Agency when the provider called them in. As such, it is more likely than not that the complaints are reliable and true.

Petitioner also argues that the complaints are unreliable because they were never investigated. However, both [REDACTED] and the Waiver Agency spoke to Petitioner's father on numerous occasions regarding the complaints and informed Petitioner's father that services in the home could not be guaranteed if the behaviors continued. Petitioner argues that the seriousness of the complaints is in question because Adult Protective Services never substantiated any of the complaints against Petitioner's father. However, the termination here was not based on any of the complaints made to Adult Protective Services, the termination is based on complaints made by Petitioner's service provider. Petitioner also argues that the decision to terminate Petitioner's services by MDHHS was based on a review of the Critical Incident database, but excerpts from the database were not admitted into the record. While this is true, the complaints accepted into the record from [REDACTED] are sufficient to warrant termination of Petitioner's services.

Petitioner argues that termination was improper because there were no reported issues within two and one half months of the termination. While this is also true, it appears that the Waiver Agency had been letting the complaints slide because the service provider was willing to continue to service Petitioner, and Petitioner clearly needs services. However, once the complaints were reviewed at the State level, it became clear to both the Department and the Waiver Agency that action needed to be taken to safeguard workers in Petitioner's home. Petitioner also argues that the Waiver Agency should have gotten all of the parties together prior to termination to address the complaints. While the undersigned agrees that such a meeting may have been a better option than suddenly terminating Petitioner's services, the issue of such a meeting is not before the undersigned and the undersigned has no authority to order the parties to hold such a meeting.

In sum, Petitioner and his father have failed repeatedly to provide a safe and non-threatening work environment for Petitioner's caregivers and the termination of Petitioner's services was proper. It appears that Petitioner may be able to receive services from another Waiver Agency in the area, but if not, Petitioner's father may need to consider a more restrictive setting for Petitioner, such as an assisted living home or an AFC home, given that it has been shown that Petitioner cannot always be safely cared for in his own home.

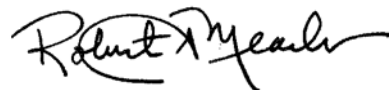
At the conclusion of the hearing, Petitioner made a Motion to order the Waiver Agency to use an out of network provider to provide services to Petitioner. Based on this decision, that Motion is denied.

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 terminated Petitioner's services due to multiple violations of MI Choice Participant Responsibilities.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



RM/cg

Robert J. 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

DHHS

[REDACTED]

Counsel for Petitioner

[REDACTED]

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]