



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: [REDACTED]
MAHS Docket No.: 16-000038
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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], the Petitioner, appeared on her own behalf. [REDACTED], Aide with Dedicated in Care; [REDACTED], niece; and [REDACTED], sister, appeared as witnesses for Petitioner. [REDACTED], Hearing Officer, represented the Department of Health and Human Services' Waiver Agency, [REDACTED] ("Waiver Agency" or "A&D"). [REDACTED], Licensed Bachelors of Social Work; [REDACTED], Registered Nurse (RN); and [REDACTED] RN Clinical Supervisor, appeared as witnesses for the Waiver Agency.

The hearing was originally scheduled for [REDACTED]. However, due to a State of Michigan office closure that date, the hearing was adjourned and re-scheduled for [REDACTED].

During the hearing proceedings, the Waver Agency's Hearing Summary Packet was admitted as marked, Exhibit A, pp. 1-7.

ISSUE

Did the Waiver Agency properly end Petitioner's participation as a Self-Determination client in the MI Choice Waiver services program resulting in a termination of Fiscal Intermediary services and changes with other 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 Petitioner receives services through the MI Choice Waiver program and was participating as a Self-Determination client, with her daughter as the paid caregiver. (Exhibit A, pp. 1-3; Hearing Officer Testimony)
2. As a Self Determination participant for the MI Choice Waiver program, the Petitioner received Fiscal Intermediary services along with other waiver services. (Hearing Officer Testimony)
3. The Waiver Agency received information from the Adult Day Health services provider, that it had been reported that Petitioner's daughter, the self-determination caregiver, was verbally and mentally abusive to Petitioner. (Exhibit A, pp. 1 and 4)
4. The Waiver Agency met with Petitioner, who explained that she was very upset, overwhelmed, and in a manic episode with her bipolar disease. The Waiver Agency noted that Petitioner agreed to an increase in the Adult Day Health services and to have an agency come to her home on the weekends for 3 hours for assistance to compensate for the loss of self-determination services. (Exhibit A, pp. 1-2; Hearing Officer Testimony)
5. A waiver agency may terminate self-determination for a participant when problems arise due to the participant's inability to effectively direct services and supports. (Medicaid Provider Manual, MI Choice Waiver Chapter, October 1, 2015, p. 29)
6. The fiscal intermediary services ended with the end of Petitioner's participation as a self-determination client. (Hearing Officer Testimony)
7. On [REDACTED], an Adequate Action Notice was issued to Petitioner stating self-determination services would terminate as requested by Petitioner. (Exhibit A, p. 3)
8. On [REDACTED], Petitioner's hearing request was received by the Michigan Administrative Hearing System.

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.

Appellant 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 AAA, 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 Medicaid Provider Manual addresses self-determination for the MI Choice Waiver Program:

6.3 SELF-DETERMINATION

Self-Determination provides MI Choice participants the option to direct and control their own waiver services. Not all MI Choice participants choose to participate in self-determination. For those that do, the participant (or chosen representative(s)) has decision-making authority over staff who provide waiver services, including:

- Recruiting staff
- Referring staff to an agency for hiring (co-employer)
- Selecting staff from worker registry
- Hiring staff (common law employer)
- Verifying staff qualifications
- Obtaining criminal history review of staff

- Specifying additional service or staff qualifications based on the participant's needs and preferences so long as such qualifications are consistent with the qualifications specified in the approved waiver application and the Minimum Operating Standards
- Specifying how services are to be provided and determining staff duties consistent with the service specifications in the approved waiver application and the Minimum Operating Standards
- Determining staff wages and benefits, subject to State limits (if any)
- Scheduling staff and the provision of services
- Orienting and instructing staff in duties
- Supervising staff
- Evaluating staff performance
- Verifying time worked by staff and approving timesheets
- Discharging staff (common law employer)
- Discharging staff from providing services (co-employer)
- Reallocating funds among services included in the participant's budget
- Identifying service providers and referring for provider enrollment
- Substituting service providers
- Reviewing and approving provider invoices for services rendered

Participant budget development for participants in self-direction occurs during the person-centered planning process and is intended to involve individuals the participant chooses. Planning for the participant's plan of service precedes the development of the participant's budget so that needs and preferences can be accounted for without arbitrarily restricting options and preferences due to cost considerations. A participant's budget is not authorized until both the participant and the waiver agency have agreed to the amount and its use. In the event that the participant is not satisfied with the authorized budget, he/she may reconvene the person-centered planning process. The waiver services of Fiscal Intermediary and Goods and Services are available specifically to self-determination participants to enhance their abilities to more fully exercise control over their services.

The participant may, at any time, modify or terminate the arrangements that support self-determination. The most effective method for making changes is the person-centered planning process in which individuals chosen by the participant work with the participant and the supports coordinator to identify challenges and address problems that may be interfering with the success of a self-determination arrangement. The decision of a participant to terminate participation in self-determination does not alter the services and supports identified in the participant's plan of service. When the participant terminates self-determination, the waiver

agency has an obligation to assume responsibility for assuring the provision of those services through its network of contracted provider agencies.

A waiver agency may terminate self-determination for a participant when problems arise due to the participant's inability to effectively direct services and supports. Prior to terminating a self-determination agreement (unless it is not feasible), the waiver agency informs the participant in writing of the issues that have led to the decision to terminate the arrangement. The waiver agency will continue efforts to resolve the issues that led to the termination.

Medicaid Provider Manual,
MI Choice Waiver Chapter,
October 1, 2015, pp. 28-29
(Underline added by ALJ)

The Petitioner receives services through the MI Choice Waiver program and was participating as a Self-Determination client, with her daughter as the paid caregiver. (Exhibit A, pp. 1-3; Hearing Officer Testimony) As a Self Determination participant for the MI Choice Waiver program, the Petitioner received Fiscal Intermediary services along with other waiver services. (Hearing Officer Testimony)

The Waiver Agency received information from the Adult Day Health services provider, that it had been reported that Petitioner's daughter, the self-determination caregiver, was verbally and mentally abusive to Petitioner. There was a progress note documenting complaints from Petitioner to the program manager (PM), a licensed practical nurse (LPN), and counselor. (Exhibit A, pp. 1 and 4)

The Waiver Agency met with Petitioner, who explained that she was very upset, overwhelmed, and in a manic episode with her bipolar disease. The Waiver Agency noted that Petitioner agreed to an increase in the Adult Day Health services and to have an agency come to her home on the weekends for 3 hours for assistance to compensate for the loss of the services previously provided through self-determination. (Exhibit A, pp. 1-2; Hearing Officer Testimony)

The Hearing Officer explained that the decision to terminate Petitioner's participation as a self-determination client was based on the reports of abuse as well as Petitioner's mental instability indicating it was difficult for Petitioner to make decisions on her own for self-determination. (Exhibit A, p. 1; Hearing Officer Testimony)

Petitioner testified that her daughter was the best caregiver she ever had and did more for her than any of her other children. Petitioner explained that at that time she was going through a bad time and not sleeping well. Petitioner stated that she did not request to be taken off the self-determination, but did agree to the increase in Adult Day Health services. (Petitioner Testimony)

Petitioner's hours have since been adjusted again to decrease the Adult Day Health services and increase the hours an agency provides care in Petitioner's home. (Aide Testimony; Hearing Officer Testimony)

Petitioner's Aide clarified that Petitioner is currently happy with the hours and services, but wanted to clear her daughter's name. (Aide Testimony)

Petitioner's sister testified that Petitioner's daughter was an excellent caregiver, and spent more time with Petitioner than the hours she was paid for. (Sister Testimony)

Petitioner's niece testified that she never heard any mental or verbal abuse and described some of the care Petitioner's daughter had provided. Petitioner's niece also indicated Petitioner's daughter was a good caregiver. (Niece Testimony)

As noted above, the Medicaid Provider Manual states that a waiver agency may terminate self-determination for a participant when problems arise due to the participant's inability to effectively direct services and supports. Petitioner's own testimony indicates she was going through a bad time when the abuse allegations were made. The abuse allegations and Petitioner's mental instability support the Waiver Agency's determination that it was difficult for Petitioner to make decisions on her own for self-determination, and therefore participation as a self-determination client should be terminated. The Waiver Agency adjusted the hours for the Adult Day Health program and arranged for an agency to provide in home care for Petitioner. Overall, the termination of fiscal intermediary services because self-determination participation ended, and the other adjustments made to Petitioner's services to ensure her needs for assistance were met, were appropriate based on the information available to the Waiver Agency at that time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly ended Petitioner's participation as a Self Determination client in the MI Choice Waiver services program resulting in a termination of Fiscal Intermediary services and changes with other services.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.



CL/cg

Colleen Lack
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]

Petitioner

[REDACTED]