



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: September 27, 2016
MAHS Docket No.: 16-004593
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 the Petitioner's request for a hearing.

After due notice, a hearing was held on September 21, 2016. Petitioner [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Long Term Program director; [REDACTED], Nurse Care Manager; and [REDACTED], Social Work Care Manager represented the [REDACTED] ([REDACTED]), the Waiver Agency (Waiver Agency) for the Department of Health and Human Services.

ISSUE

Did the Waiver Agency properly cancel Petitioner's MI Choice Waiver Program benefits?

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 October 17, 2013 Petitioner was initially enrolled into MI Choice Waiver Program.
2. Petitioner was initially serviced by [REDACTED] Care Management staff from [REDACTED] County.
3. In February 2015, Petitioner moved from [REDACTED] County area to [REDACTED], MI and care management services were transferred to [REDACTED]'s [REDACTED] staff.
4. Petitioner's care has been primarily provided via self Determination option of the MI Choice program with additional supports provided by formal home care agency staff throughout his participation in the MI Choice program.

5. Provision of services for Petitioner has been a source of trouble, with agency staff regularly late of missing work shifts.
6. [REDACTED] spent a considerable time trying assure that formal agency staff was available to meet care needs that were not able to be addressed through the self-determination process.
7. On March 7, 2016, Petitioner arranged transportation for himself to go to the [REDACTED] Care Management office in [REDACTED] and appeared without an appointment.
8. Petitioner demanded that his care workers receive \$ [REDACTED] per hour.
9. Petitioner became very irate and agitated and took a bottle of sand from his side, poured it into his hand and threw it into the [REDACTED] Care Management Supervisor's face.
10. The police were called and Petitioner was taken to the local [REDACTED] Hospital for evaluation.
11. On April 7, 2016 [REDACTED] contacted Petitioner via telephone to set an appointment for a reassessment.
12. On April 8, 2016, Petitioner contacted the police and stated that a lady from the agency was coming to kill him and stated that he did not want anyone from [REDACTED] coming to his home.
13. On April 8, 2016, the Waiver Agency sent Petitioner a Negative Action Notice indicating that Petitioner's services would be discontinued based upon his refusal to allow [REDACTED] staff to enter his home to complete the assessment and on his statement to the police that he did not want anyone from [REDACTED] coming to his home.
14. On April 18, 2016, the Michigan Administrative Hearing System received a Request for Hearing from Petitioner to contest the Negative Action Notice.
15. On April 22, 2016, [REDACTED] was notified that Petitioner has moved to [REDACTED].
16. On April 22, 2016, [REDACTED] sent Petitioner a second Negative Action Notice stating since Petitioner has moved to a different long-term care setting, his active participation in the MI Choice Program was being closed effective April 20, 2016, coinciding with the date of admission to a nursing home.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 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)

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2014, 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).

* * *

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 his/her 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 needs at least one waiver service 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. (p.1, emphasis added).

██████'s Participant Handbook (Attachment #5), states that a participant must make sure the home is "safe and non-threatening for people who are helping. This includes: not verbally or physically abusing the people trying to help. The Waiver Agency has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with policy when it cancelled Petitioner's MI

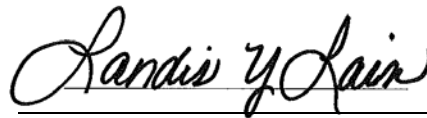
Choice Waiver Program benefits, first because Petitioner's behavior was in violation of the Agency safety policy and secondly because Petitioner has changed his Long Term care status and moved to a nursing home. He is no longer eligible for home based services.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined that Petitioner was no longer eligible for the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that:

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



LL/sb

Landis Lain
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]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]

Community Health Rep

[REDACTED]