



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: December 6, 2016  
MAHS Docket No.: 16-014229  
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 telephone hearing was held on December 1, 2016. The Petitioner appeared on her own behalf and offered testimony. [REDACTED], Assistant Director, appeared on behalf of the Department. [REDACTED], Assistant Director, [REDACTED], Supports Coordinator and [REDACTED], Supports Coordinator, appeared as witnesses for the Department.

Exhibits:

|            |                     |
|------------|---------------------|
| Petitioner | None                |
| Department | A – Hearing Summary |

**ISSUE**

Is the Petitioner entitled to payment for services rendered August 15, 2016 through September 11, 2016?

**FINDINGS OF FACT**

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

1. Prior to August 15, 2016, the Petitioner was a MI Choice Medicaid waiver participant in another service region. (Testimony).
2. On August 15, 2016, the Petitioner was assessed by the Department for enrollment with the MI Choice program in the Department's region. (Testimony).

3. On or around August 15, 2016, the Petitioner elected to continue receiving MI Choice waiver benefits under the self-determination option. (Testimony).
4. On August 26, 2016, the Department received from the Petitioner the direct care worker packet. (Testimony).
5. On approximately September 12, 2016, the Petitioner's direct care worker passed a required criminal background screening allowing for the authorization of services. (Testimony).
6. On September 12, 2016, the Department began paying/providing MI Choice waiver services to the Petitioner. (Testimony).
7. On September 12, 2016, the Department sent the Petitioner an Adequate Action Notice indicating they were unable to provide payment to the Petitioner for MI Choice Services prior to the kickoff date. (Exhibit A, p. 5; Testimony).
8. On October 7, 2016, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by the Petitioner.

### **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.

Petitioner is claiming 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 Services to the Michigan Department of Community Health (Department). 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)*

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. See 42 CFR 430.25(c)(2).

Types of services that may be offered generally include:

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

*42 CFR 440.180(b)*

Portions of Attachment K address enrollment and coordination of services:

## **VII. Enrollment**

After eligibility is determined, waiver agencies manage applicant enrollment into MI Choice. Waiver agencies develop written procedures for managing enrollment activities that are consistent with MDCH MSA policy.

### **A. First Day of MI Choice Enrollment**

The waiver agency establishes MI Choice enrollment and termination dates. The agency is responsible for providing written notification to the local DHS office of these dates (see BEM 106) and DHS will confirm eligibility for the dates specified. The MI Choice enrollment date is on or following the assessment date. The enrollment date usually coincides with the date of assessment.

#### **F. Transferring MI Choice Participants to another Waiver Agent**

MDCH ensures participants have a choice of waiver agency, as available, to coordinate MI Choice services. A participant may choose to transfer enrollment from one waiver agency to another, as available within the region where he/she lives, or a participant may move to another region of the state. Waiver agencies are responsible for managing transfers of participants to other agencies or accepting transfers from another agency.

##### **Requirements**

1. Waiver agencies ensure that participants are transferred from one agency to another, preserving continuity of care and the integrity of the participant's preferences and person-centered plan.
2. The new waiver agency should perform an initial assessment and make a NFLOC determination. The new waiver agency must enter a NFLOC Determination in the online system for the transferred participant within 14 calendar days after the date of the participant's enrollment in the new waiver agency's program.
3. The new waiver agency for each transferred participant must not reimburse providers for delivered MI Choice services authorized by a previous waiver agency. The new waiver agency reviews plan of service activity and authorizes a new plan of service with the participant.

Supports Coordination Service Performance Standards and MI  
Choice Program Operating Criteria Attachment K,  
FY 2015, pp 27, 37

\* \* \*

The July 31, 2014 MSA Medical Services Administration Bulletin indicates that criminal history screens must be completed and passed by all current and potential providers before the providers are allowed to provide services under a Medicaid program. (Exhibit A, pp. 16-18).

The Department indicated they could not provide payments for services rendered between August 15, 2016 through September 11, 2016 as a result of the Petitioner's providers not completing and passing the required criminal history screens.

The Petitioner argued her case was transferred to the new Department agency and as a result, the criminal history screens should also have transferred. However, based upon the policy found above and as discussed during the hearing, each Department agency is assigned the task of determining eligibility and the level of services required. Consequently, the Department therefore was responsible for making a new eligibility determinations and part of that determination process is to have all providers take and pass the criminal history screens.

Consequently, for the reasons discussed above, I find the Department properly denied payments for the time period of August 15, 2016 through September 11, 2016.

#### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides the Department properly denied payments for the time period of August 15, 2016 through September 11, 2016.

**IT IS THEREFORE ORDERED** that:

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

CA/sb

  
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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

**DHHS -Dept Contact**

[REDACTED]

**Petitioner**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**Community Health Rep**

[REDACTED]