



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: January 31, 2017
MAHS Docket No.: 16-016177
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 January 4, 2017. Petitioner, appeared on his own behalf.

The following individuals appeared as witnesses on behalf of the Departments subcontracting Waiver Agency, the [REDACTED], Michigan (Respondent, Department or Agency): [REDACTED], Assistant Director, [REDACTED], Project Choices Director, [REDACTED], Nursing Supervisor, [REDACTED], RN Nurse Care Manager, and [REDACTED], Social Work Supervisor.

ISSUE

Did the Waiver Agency properly administratively close Petitioner's case 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.
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.

3. Petitioner is a 36 year-old male who is a beneficiary of welfare SSI and Medicaid programs.
4. Petitioner has been a participant in the MI Choice Waiver Program since April 14, 2013. Petitioner is a paraplegic. (Exhibit A.2).
5. On September 6, 2016, the Waiver Agency mailed Petitioner an Advanced Action Notice indicating that Petitioner's case was being closed due to Petitioner's failure to comply with a contract set up due to Petitioner not complying with his contractual Patient Responsibilities as a participant in the MI Choice Waiver program. (Exhibit A.51).
6. Over the years, Petitioner has had several home care agencies where aides suspected illegal activity, complained of an unsafe environment due to unruly visitors, illegal paraphernalia and substances in open settings in Petitioner's residence, complaints by caregivers that they do not feel safe, drug purchasing activities. (Exhibit A).
7. In response to continual staff and agency changes, on March 13, 2015 the Respondent drew up a contract with Petitioner wherein Petitioner agreed that in order to have continued home care workers, Petitioner agreed that not to allow other persons other than immediate family to be present while workers are in his home, and not to request that caregivers loan money or purchase items for Petitioner that may be considered illegal, such as street drugs. Petitioner further agreed to not have illegal substances present within view. Petitioner further acknowledged that failure to comply with the terms of the agreement will result in closure or his case, and discontinuance of the MI Choice Waiver and other benefits provided by the Respondent. Petitioner signed the agreement on March 13, 2015. (Exhibit A.4).
8. Due to further complaints by [REDACTED], observing suspicious drug activities and visitors present when caregivers were present, on July 22, 2016 Petitioner was asked to renew and resign the agreement. (Exhibit A.5).
9. On September 6, 2016 the Respondent was notified by [REDACTED], a new agency, that services were stopping on September 5, 2016 due to the workers not feeling safe. (Exhibit A).
10. On November 9, 2016 the Michigan Administrative Hearing System received a request for hearing from the Petitioner. (Exhibit 1).

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 Community Health (Department). Regional agencies, in this case The Tri-County Office on Aging, functions 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)*

In this case, 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:

Provide a safe and non-threatening environment for those arranging for and providing services. For example:

* * * *

- Being respectful to workers who come into your home.
- Not verbally or physically abusing the people trying or help you.
- Making sure there are no illegal or illicit activities happening in your home....(Exhibit A.40).

In addition, due to Petitioner's failure to comply with his responsibilities, the Respondent had a contract specifically drawn up to address these issues, which Petitioner signed in March, 2015, and July, 2016. Subsequent to this time, again, another agency withdrew services on the grounds that the workers complained about the safety of the work.

Petitioner has the burden of proof to show that the action(s) taken by the Waiver Agency were not consistent with policy and procedure, and/or contrary to law. Petitioner has failed to meet his burden. The Department presented over 51 pages of documents supporting its action; Petitioner submitted no documentary evidence. Petitioner's testimonial evidence was not credible.

As the evidence herein supports the Waiver Agency's actions under federal and state law, this ALJ must uphold the closure.

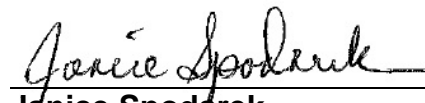
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly administratively closed Petitioner's case due to violations of MI Choice Participant Responsibilities.

IT IS THEREFORE ORDERED that:

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

JS/cg



Janice Spodarek

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

Petitioner

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS-Location Contact

[REDACTED]

Community Health Rep

[REDACTED]