



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Mailed: January 25, 2017  
MAHS Docket No.: 16-016290  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Steven Kibit**

**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 January 4, 2016. Petitioner appeared and testified on his own behalf. [REDACTED], Petitioner's wife, also testified as a witness for Petitioner. [REDACTED], MI Choice Waiver Director, appeared and testified on behalf of Respondent Senior Resources. [REDACTED] social worker, also testified as a witness for Respondent.

**ISSUE**

Did Respondent properly terminate Petitioner's lawn care and snow removal 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. Respondent is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. Since October 22, 2013, Petitioner has been enrolled in the MI Choice Waiver Program. (Testimony of Ms. [REDACTED]).
3. As part of his services, he has received lawn care and snow removal services since November of 2013. (Testimony of Ms. [REDACTED]).

4. On October 24, 2016, Petitioner telephoned [REDACTED] and reported that he had only seen workers complete his lawn care twice recently and that it looked bad, to the point he had received a letter from the city about his yard. (Exhibit B, page 2).
5. That same day, [REDACTED] [REDACTED] went to Petitioner's home, where she determined that the status of Petitioner's lawn would not merit a letter from the city. (Exhibit B, page 1).
6. Petitioner did not produce any letter, but did report that he had received a letter about the height of his lawn in the past and his son had to come and mow it for him. (Exhibit B, page 1).
7. [REDACTED] also noted that Petitioner's daughter was living with him and was now attending college. (Exhibit B, page 1).
8. She further noted that Petitioner is a Deacon in his church. (Exhibit B, page 1).
9. After visiting with Petitioner [REDACTED] determined that Petitioner's lawn care and snow removal services should be cancelled. (Exhibit B, page 1).
10. On October 24, 2016, Respondent sent Petitioner written notice that, effective November 4, 2016, his lawn care and snow removal services would be stopped. (Exhibit A, page 1).
11. The reason for the action given in the notice was that Petitioner had informal supports that could provide the service. (Exhibit A, page 1).
12. On November 7, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit 1, page 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.

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 Respondent, 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, Skilled Nursing Facility, Intermediate Care Facility, or Intermediate Care Facility/Mentally Retarded, and is reimbursable under the State Plan.

Types of services that may be offered through the waiver program 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)*

With respect to waiver services, the Medicaid Provider Manual generally provides:

#### **SECTION 4 – SERVICES**

The array of services provided by the MI Choice program is subject to the prior approval of CMS. Waiver agencies are required to provide any waiver service from the federally approved array that a participant needs to live successfully in the community, that is:

- indicated by the current assessment;
- detailed in the plan of service; and
- provided in accordance with the provisions of the approved waiver.

Services must not be provided unless they are defined in the plan of service and must not precede the establishment of a plan of service. Waiver agencies cannot limit in aggregate the number of participants receiving a given service or the number of services available to any given participant. Participants have the right to receive services from any willing and qualified provider.

*MPM, October 1, 2016 version  
MI Choice Waiver Chapter, page 10*

Moreover, with respect to the types of services in this case, lawn care and snow removal, the MPM also states:

#### **4.1.G. CHORE SERVICES**

Chore Services are needed to maintain the home in a clean, sanitary and safe environment. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. Other covered services might include yard maintenance (mowing, raking and clearing hazardous debris such as fallen branches and trees) and snow plowing to provide safe access and egress outside the home. These types of services are allowed only in cases when neither the participant nor anyone else in the household is capable of performing or financially paying for them, and where no other

relative, caregiver, landlord, community or volunteer agency, or third party payer is capable of, or responsible for, their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service.

*MPM, October 1, 2016 version  
MI Choice Waiver Chapter, page 14  
(Emphasis added)*

Here, Respondent terminated Petitioner's lawn care and snow removal services pursuant to the above policies and on the basis that other resources are capable of performing the service. In particular, its witnesses testified that, while neither Petitioner nor his wife are capable of moving the lawn or shoveling snow, Petitioner's adult daughter lives in the home; Petitioner's son has mowed Petitioner's lawn in the past; and that Petitioner is a Deacon in a church whose other members may be able to assist him. The testimony and progress notes from Petitioner's case also provide that Petitioner reported that his daughter was not performing the service because Petitioner did not believe in having her do that type of work.

In response, Petitioner and his wife testified that they are unable to perform any necessary lawn care or snow removal because of their medical conditions. Petitioner also testified that his son lives in Virginia and that, while he was able to mow the lawn once when he happened to be in town and it needed to be done, Petitioner's son lives too far away to do the work normally. Petitioner further testified that he has not been to church in five months and that no one there can assist them. With respect to his daughter, Petitioner also testified that she has her own medical issues, including severe allergies, which prevent her from performing lawn care or snow removal. Petitioner and his wife testified further testified that they did not fully discuss their daughter's issues during [REDACTED] visit because they did not know it was an issue and that, if necessary, they could produce medical documentation demonstrating their daughter's inability to perform the service.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in removing his lawn care and snow removal services. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information available at the time the decision was made.

Given the available evidence and applicable policies in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must be affirmed.

The above policy clearly provides that chore services are only allowed when no one else, including the participant, anyone else in the household or other resource, is capable of or responsible for the services and, while there is no evidence that Petitioner's son or fellow church members can consistently assist him, he does have an

adult daughter living in his home that appears capable of providing the necessary assistance. Respondent's evidence credibly demonstrates that Petitioner's daughter is only not assisting him because he does not believe in having her do yard work and, while Petitioner and his wife now assert that their daughter cannot help them due to her own health issues, and that they could provide medical documentation to that effect, they did not provide any such evidence at the hearing and their testimony is unsupported.

To the extent Petitioner claims that there is additional or updated information that would demonstrate both his daughter's inability to help and his need for the service, he is free request the services again along with the relevant information. With respect to the decision at issue in this case however, Petitioner has failed to meet his burden of proof and the removal of lawn care and snow removal must be affirmed.

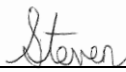
### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Petitioner's lawn care and snow removal services.

**IT IS THEREFORE ORDERED** that

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

SK/tm

  
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**Steven Kibit**  
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]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**Community Health Rep**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]