



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: February 16, 2017
MAHS Docket No.: 16-018780
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 Petitioner's request for a hearing.

After due notice, a hearing was held on February 16, 2017. Petitioner appeared on her own behalf.

██████████, Waiver Manager, represented the Department's MI Choice Waiver Agency, ██████████. (Waiver Agency or ██████████). ██████████, Supports Coordinator, appeared as a witness for the Waiver Agency

ISSUE

Did the Waiver Agency properly determine that Petitioner was no longer eligible for the MI Choice Waiver Program because she was no longer eligible for Medicaid?

FINDINGS OF FACT

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

1. Petitioner is a ██████████ female, born ██████████, who has been receiving services through the MI Choice Waiver Program. (Exhibit 1; Testimony).
2. The Waiver Agency is a contract agent of the Michigan Department of Health and Human Services (MDHHS) and is responsible for waiver eligibility determinations and the provision of MI Choice Waiver Services.
3. On November 30, 2016, Petitioner's MI Choice Waiver benefits were terminated because she was determined to be ineligible for Medicaid by MDHHS because she was over the asset limit. (Exhibit A, pp. 11-16;

Testimony)

4. On December 14, 2017, the Waiver Agency sent Petitioner an Adequate Action Notice informing her that she was no longer eligible for the MI Choice Waiver Program because she was no longer eligible for Medicaid. (Exhibit A, p. 19; Testimony).
5. On December 29, 2017, the Michigan Administrative Hearing System received Petitioner's request for an administrative hearing. (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 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 Health and Human Services (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*, October 1, 2016, 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).

* * *

Petitioner testified that she does not understand how the Department determined her eligibility and would like someone to review it. Petitioner was advised that she was

entitled to a hearing with the MDHHS to review her eligibility for Medicaid. Petitioner indicated that her doctor has ordered her supplies for wound care but she cannot get them because she does not have Medicaid.

The Waiver Agency's Waiver Manager indicated that the Waiver Agency has an eligibility specialist with the Department of Health and Human Services on site and he will have the specialist contact Petitioner to review her options regarding Medicaid eligibility.

Petitioner did not prove by a preponderance of evidence that the Waiver Agency erred in finding that she was no longer eligible for the MI Choice Waiver Program. In order to be eligible for the MI Choice Waiver Program, participants must maintain active eligibility for Medicaid. Here, Petitioner's Medicaid was cancelled because she was determined to be over the asset limit. As such, the Waiver Agency properly terminated Petitioner's MI Choice Waiver Services.

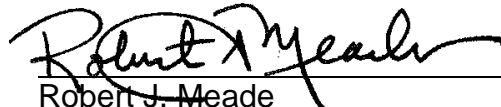
DECISION AND ORDER

The Administrative Law Judge, based on 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**.

RM/sb



Robert J. Meade

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]

Community Health Rep

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

DHHS -Dept Contact

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

Petitioner

[REDACTED]
[REDACTED]
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