



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: March 24, 2017
MAHS Docket No.: 17-000128
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 hearing was held on February 22, 2017. [REDACTED], the Petitioner appeared on his own behalf. [REDACTED], wife, appeared as a witness for Petitioner. [REDACTED], Special Projects and Training Manager, represented the Department of Health and Human Services' ("Department") Waiver Agency, [REDACTED] ("Waiver Agency"). [REDACTED], Eligibility Specialist, and [REDACTED] Registered Nurse and Primary Supports Coordinator; appeared as witnesses for the Waiver Agency.

During the hearing proceeding, the Waiver Agency's Hearing Summary packet was admitted as Exhibit A, pp. 1-34.

ISSUE

Did the Waiver Agency properly terminate Petitioner's services through the MI Choice Waiver program based on the Medicaid financial eligibility determination made by the Department?

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 was enrolled in the MI Choice Waiver program and his last assessment was completed on [REDACTED]. (Exhibit A, pp. 12-34)

2. In [REDACTED], employment income was verified for the Department's review of Petitioner's Medicaid eligibility. (Exhibit A, pp. 5-9)
3. On [REDACTED], the Waiver Agency received an email from the Department indicating Petitioner's last reported earned income was putting him over the income limit for Long Term Care ("LTC") Medicaid. It was explained that their system had been erroneously excluding earned income and approving Medicaid, a fix was being put in place, but it was going to cause Petitioner's Medicaid to end at the end of October. (Exhibit A, p. 5)
4. On [REDACTED], the Waiver Agency received an email from the Department indicating Petitioner was over the income limit for LTC Medicaid, his Medicaid-extended care case would close effective November 1, 2016, and Petitioner would then have Medicaid with a deductible of [REDACTED]. The income reported at the time of the September review put him over the income limit. It was also indicated that if income changes, a new application and verification of all income could be submitted. (Exhibit A, p. 5)
5. On [REDACTED], the Waiver Agency received an email from the Department indicating they had not received a disenrollment form for Petitioner noting that Petitioner was not eligible for LTC Medicaid beginning [REDACTED]. (Exhibit A, p. 4)
6. On [REDACTED], the Waiver Agency sent Petitioner an Adequate Action Notice indicating all MI Choice Waiver services would not be authorized effective [REDACTED]. The Waiver Agency also called Petitioner, in part, stating that because he was working and making money he was no longer eligible for waiver services. (Exhibit A, pp. 3-4)
7. On [REDACTED] the Michigan Administrative Hearing System received Petitioner's hearing request. (Hearing Request)

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 Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Petitioner is seeking 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 to the Michigan Department of Health and Human Services. 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)

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as “medical assistance” under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b))

The Medicaid Provider Manual (MPM) addresses financial eligibility for the MI Choice Waiver:

2.1 FINANCIAL ELIGIBILITY

Medicaid reimbursement for MI Choice services requires a determination of Medicaid financial eligibility for the applicant by MDHHS. As a provision of the waiver, MI Choice applicants benefit from an enhanced financial eligibility standard compared to basic Medicaid eligibility. Specifically, MI Choice is furnished to participants in the special home and community-based group under 42 CFR §435.217 with a special income level equal to 300% of the SSI Federal Benefit Rate. Medicaid eligibility rules stipulate that participants are not allowed to spend-down to the income limit to become financially eligible for MI Choice.

Medicaid Provider Manual,
MI Choice Waiver Chapter,
October 1, 2016, p. 1.

As stated in the above cited policy, the Department makes the Medicaid financial eligibility determination. As discussed, Petitioner’s concerns regarding the Medicaid financial eligibility determination itself could not be addressed in this hearing with the Waiver Agency. Petitioner’s hearing request has been forwarded for a hearing with the Department regarding their determination.

Regarding the Waiver Agency's actions, Petitioner and his wife noted the lack of timely notice from the Waiver Agency that Petitioner's waiver services would end. Petitioner received a call indicating his services would end that day. (Wife Testimony)

The testimony of the Special Projects and Training Manager indicated that the Waiver Agency was notified by the Department on [REDACTED] that Petitioner was no longer financially eligible due to the increased income and that Petitioner lost LTC Medicaid as of [REDACTED]. Therefore, the Waiver Agency had to immediately terminate Petitioner's waiver services. (Special Projects and Training Manager Testimony)

Review of the submitted progress notes indicates this was not accurate. On [REDACTED], the Waiver Agency received an email from the Department indicating Petitioner's last reported earned income was putting him over the income limit for LTC Medicaid. It was explained that their system had been erroneously excluding earned income and approving Medicaid, a fix was being put in place, but it was going to cause Petitioner's Medicaid to end at the end of October. (Exhibit A, p. 5) On [REDACTED], the Waiver Agency received an email from the Department indicating Petitioner was over the income limit for LTC Medicaid, his Medicaid extended care case would close effective [REDACTED], and Petitioner's would then have Medicaid with a deductible of [REDACTED]. The income reported at the time of the September review put him over the income limit. It was also indicated that if income changes, a new application and verification of all income could be submitted. (Exhibit A, p. 5) On [REDACTED], the Waiver Agency received an email from the Department indicating they had not received a disenrollment form for Petitioner noting that Petitioner was not eligible for LTC Medicaid beginning November 1, 2016. (Exhibit A, p. 4)

The Waiver Agency's documentary evidence establishes that the Waiver Agency was aware of the Department's Medicaid financial eligibility determination on [REDACTED]. (Exhibit A, p. 5) Accordingly, it would have been expected that the Waiver Agency would have provided more timely notice to Petitioner that his MI Choice Waiver Services would terminate based on the Department's Medicaid financial eligibility determination. However, there is no remedy this Administrative Law Judge can order regarding Petitioner not receiving timely notice of the termination of his MI Choice Waiver services.

Ultimately the Department determined that Petitioner was no longer financially eligible for LTC Medicaid. Therefore, Petitioner was no longer eligible for MI Choice Waiver services. The determination to close Petitioner's MI Choice Waiver case must be upheld because the Department determined that for Petitioner's case, income exceeds the limit for this program.

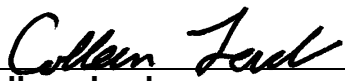
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the termination of Petitioner's services through the MI Choice Waiver program was proper based on the Medicaid financial eligibility determination made by the Department.

IT IS THEREFORE ORDERED that

The Waiver Agency's decision is **AFFIRMED**.

CL/cg



Colleen Lack
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

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]