

GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: February 27, 2020  
MOAHR Docket No.: 19-012411  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

## **ADMINISTRATIVE LAW JUDGE: Colleen Lack**

### **DECISION AND ORDER**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on January 21, 2020. [REDACTED], the Petitioner, appeared on her own behalf. Alberta Smith Plump, Manager, appeared on behalf of the Respondent Michigan Department of Health and Human Services' (MDHHS or Department) Waiver Agency, Detroit Area Agency on Aging (Waiver Agency). Tamika Mobley-Johnson, Social Work Manager Eligibility Department, appeared as a witness for the Waiver Agency.

During the hearing proceeding, Petitioner's Hearing Request was admitted as Exhibit 1.

### **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 MDHHS?

### **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 received services including: community living services; supports coordination; home delivered meals; monthly emergency monitoring; private duty nursing; LPN services; and medication dispenser. (Exhibit 1; Social Work Manager Eligibility Department Testimony)

2. The Waiver Agency Care Manager received notification from Petitioner's MDHHS worker that Petitioner was \$ [REDACTED] over the financial eligibility limit for the MI Choice Waiver program. (Social Work Manager Eligibility Department Testimony)
3. On October 31, 2019, the Waiver Agency sent Petitioner written notice indicating all MI Choice Waiver services would not be authorized effective January 1, 2020, based on the MDHHS Medicaid financial eligibility determination that Petitioner no longer qualified for the MI Choice Waiver program as of November 1, 2019, Petitioner. (Social Work Manager Eligibility Department Testimony)
4. On December 2, 2019, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's hearing request. (Exhibit 1)

### **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, 2019, p. 1.

As stated in the above cited policy, MDHHS makes the Medicaid financial eligibility determination for the MI Choice Waiver program. Further, the Medicaid financial eligibility determination itself could not be addressed in this hearing with the Waiver Agency. Petitioner stated she had already filed a hearing request regarding the MDHHS determination.

The testimony of the Social Work Manager Eligibility Department indicated the Waiver Agency was notified by MDHHS that Petitioner was no longer financially eligible for the MI Choice Waiver program as of November 1, 2019, based on Petitioner being \$ [REDACTED] over the financial eligibility limit. Accordingly, on October 31, 2019, the Waiver Agency sent Petitioner written notice indicating all MI Choice Waiver services would not be authorized effective January 1, 2020. (Social Work Manager Eligibility Department Testimony)

Regarding the Waiver Agency's actions, Petitioner stated that she understood the reason for the termination was because she was \$ [REDACTED] over the limit required. However, this is taking things away from Petitioner. Now, Petitioner has to pay for her medicine, incontinence supplies, and everything else. Petitioner is now behind in rent because she could not afford to pay the rent and get her supplies. (Petitioner Testimony)

It is understood that Petitioner has lost Medicaid eligibility, not just MI Choice Waiver Services, because she no longer meets the financial eligibility criteria for the MI Choice Waiver program. However, the ALJ can only review the Waiver Agency's determination under the applicable policy, and has no authority to change or make any exceptions to policy.

Policy is clear that MDHHS determines financial eligibility for the MI Choice Waiver program. In this case, the Waiver Agency was notified by MDHHS of their determination that Petitioner was no longer financially eligible for the MI Choice Waiver program. Therefore, the Waiver Agency's determination to close Petitioner's MI Choice Waiver case, based upon the MDHHS determination that Petitioner was no longer financially eligible for this program, must be upheld.

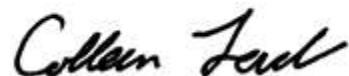
**DECISION AND ORDER**

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 MDHHS.

**IT IS THEREFORE ORDERED** that

The Waiver Agency's decision is AFFIRMED.

CL/dh



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**Colleen Lack**  
Administrative Law Judge  
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

**DHHS Department Rep.**

Heather Hill  
400 S. Pine 5th Floor  
Lansing, MI 48933

**DHHS -Dept Contact**

Brian Barrie  
CCC 7th Floor  
Lansing, MI 48919

**DHHS -Dept Contact**

Elizabeth Gallagher  
400 S. Pine 5th Floor  
Lansing, MI 48909

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

**Community Health Rep**

Ronald Taylor  
Detroit Area Agency on Aging  
1333 Brewery Park Blvd  
Detroit, MI 48207