

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

MI

Date Mailed: January 6, 2021
MOAHR Docket No.: 21-004860
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on December 14, 2021. Petitioner appeared and testified on his own behalf. Sarah Jacobs, Senior Manager of Regulatory Compliance and Quality Performance, appeared and testified on behalf of Respondent Area Agency on Aging 1-B. Susan Miller, Director of Clinical Operations, also testified as a witness for Respondent.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit A. Respondent also submitted eight exhibits that were admitted into the record as Exhibits #1 - #8.

ISSUE

Did Respondent properly terminate Petitioner's services with Respondent?

FINDINGS OF FACT

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

1. MI Choice is a waiver program operated by the Michigan Department of Health and Human Services (MDHHS) 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.
2. Respondent is a contract agent of MDHHS and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area, which includes the counties of Livingston, Macomb, Monroe, Oakland, St. Clair, and Washtenaw. (Exhibit #6, page 1).

3. Petitioner is a Medicaid beneficiary who was approved for services from Respondent through MI Choice as of October 1, 2020. (Exhibit #3, pages 1-2).
4. At that time, Petitioner lived in [REDACTED], Michigan, which is in Oakland County and within Respondent's service area. (Exhibit #3, pages 1-2).
5. On July 14, 2021, Petitioner advised his Supports Coordinator with Respondent that he was in the process of moving to [REDACTED], Michigan. (Exhibit #1, pages 2-3).
6. The city of Detroit falls within the service area of different MI Choice contract agent: the Detroit Area Agency on Aging (DAAA). (Exhibit #6, page 1).
7. On July 19, 2021, after receiving a call from a representative at DAAA, Respondent forwarded Petitioner's documentation to the DAAA. (Exhibit #1, page 2; Exhibit #2, page 1).
8. On July 20, 2021, Petitioner advised Respondent that his expected enrollment date with the DAAA was July 26, 2021. (Exhibit #1, page 1).
9. Petitioner also moved to Detroit by July 25, 2021. (Exhibit #1, page 2).
10. On July 28, 2021, Respondent sent Petitioner a Notice of Adverse Benefit Determination providing that Petitioner's services with Respondent were being terminated. (Exhibit #4, pages 1-5).
11. With respect to the reason for the action, the notice stated:

[Petitioner] has moved out of Area Agency on Aging 1-B's service area on 07/25/21. Per Attachment C of the MI Choice Contract, Section VI and Federal Rule 42 CFR 438.56: Action can be taken immediately with the participant's oral or written request for disenrollment if, "The enrollee moves out of the PAHP (Area Agency on Aging 1-B) Service area".

Exhibit #4, page 2

12. On September 13, 2021, DAAA enrolled Petitioner into its program. (Testimony of Petitioner).
13. Petitioner subsequently requested that Respondent pay for his services for the time period of July 26, 2021, to September 12, 2021, which

Respondent declined to do on the basis that Petitioner's services with it had been terminated on July 25, 2021. (Testimony of Petitioner)

14. On September 21, 2021, Petitioner requested an Internal Appeal with Respondent regarding the termination of his services. (Exhibit #5, page 1).
15. On October 12, 2021, Respondent sent Petitioner a Notice of Internal Appeal Decision – Denial indicating that Petitioner's Internal Appeal had been denied. (Exhibit #5, pages 1-3).
16. With respect to the reason for that decision, the notice stated:

AAA 1-B is a Pre-Paid Ambulatory Health Plan (PAHP) contracted with the State of Michigan Department of Health and Human Services (MDHHS) to administer the MI Choice program in the following counties in the state of Michigan: Oakland, Livingston, Macomb, Monroe, St. Clair, and Washtenaw. On 7/16/21, AAA 1-B was notified that [Petitioner] moved to [REDACTED], MI, Wayne County (outside of AAA 1-B service region). AAA 1-B finds the termination of program enrollment and all services to be in compliance with Attachment C of the MI Choice Contract, Section C Procedures for disenrollment: #2: The enrollee moves out of the PAHP's service area.

AAA 1-B contacted Detroit Area Agency on Aging (DAAA) on 7/14/21 of [Petitioner's] potential transfer and to determine assessment time frame. AAA 1-B provided [Petitioner] contact information for DAAA on 7/14/21. AAA 1-B received phone call from DAAA staff member on 7/19/21 confirming participant had contacted them regarding recent move. AAA 1-B confirmed move and provided transfer documents as requested to DAAA via the standard method of the Secure File Exchange (SFE). AAA 1-B confirmed with participant on 7/20/21 that DAAA would be completing enrollment assessment with him on 7/26/21. AAA 1-B closed [Petitioner's] case on 7/25/21, the day before schedule enrollment with new waiver agent.

MI Choice services rendered following the AAA 1-B closure date of 7/25/21 would be the responsibility of the receiving waiver agent based on its enrollment assessment and the Person Centered Service Plan developed in the new service region.

Exhibit #5, pages 1-2

17. The notice also advised Petitioner of his right to request a state fair hearing if he disagreed with the decision. (Exhibit #5, pages 2-3).
18. On October 29, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter. (Exhibit A, pages 1-2).

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. 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 receiving 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)

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. See 42 CFR 430.25(c)(2).

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:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services
- (6) Habilitation services.
- (7) Respite care services.
- (8) 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.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR 440.180(b)

The Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, with respect to the program, the applicable version of the MPM states in part:

MI Choice is a waiver program operated by the Michigan Department of Health and Human Services (MDHHS) 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. The waiver is approved by the Centers for Medicare & Medicaid Services (CMS) under sections 1915(b) and 1915(c) of the Social Security Act. MDHHS carries out its waiver obligations through a network of enrolled providers that operate as Prepaid Ambulatory Health Plans (PAHPs). These entities are commonly referred to as waiver agencies. MDHHS and

its waiver agencies must abide by the terms and conditions set forth in the approved waivers.

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. MDHHS will not enact any provision to the MI Choice program that prohibits or inhibits a participant's access to a person-centered service plan, discourages participant direction of services, interferes with a participant's right to have grievances and complaints heard, or endangers the health and welfare of a participant. The program must monitor and actively seek to improve the quality of services delivered to participants. Safeguards are utilized to ensure the integrity of payments for waiver services and the adequacy of systems to maintain compliance with federal requirements.

Waiver agencies are required to provide oral and written assistance to all Limited English Proficient applicants and participants. Agencies must arrange for translated materials to be accessible or make such information available orally through bilingual staff or the use of interpreters.

* * *

SECTION 7 – ADMINISTRATION

MDHHS serves as the single state agency in the operation of the MI Choice program. MDHHS contracts with entities to administer the program throughout the state. Certain administrative functions are assigned to the local agencies as defined in the Medicaid waiver application to CMS, as renewed and amended. To assist MDHHS in operating MI Choice, agencies are required to submit periodic reports as detailed in this section.

7.1 WAIVER AGENCIES AS PREPAID AMBULATORY HEALTH PLANS

MDHHS contracts with waiver agencies that operate as PAHPs to perform administrative functions. They are responsible for disseminating waiver information to applicants, assisting applicants with waiver enrollment (which includes assisting applicants with completion of the Medicaid application to secure financial eligibility), managing

waiver enrollment against approved limits, monitoring expenditures against approved limits, conducting assessments and LOCD evaluations, reviewing person-centered service plans to ensure that waiver requirements are met, conducting utilization reviews and quality management reviews, recruiting providers, and executing Medicaid provider agreements.

Each waiver agency must sign a provider contract with MDHHS assuring that it meets all program requirements.

Waiver agencies are responsible for securing qualified service providers to deliver services. Eligible provider applicants include public, private non-profit or for-profit organizations that provide services meeting established service standards, certifications or licensure requirements. Participants may only use providers in the waiver agency's provider network, unless no willing provider is available within the waiver agency's network. Waiver agencies must ensure MI Choice services identified in the person-centered service plan are furnished according to the plan, which may include utilizing providers outside of the provider network, as specified in 42 CFR §438.206, until such time as a network provider is able to furnish the service.

* * *

4.5 OPERATING STANDARDS

MDHHS maintains and publishes the "Minimum Operating Standards for MI Choice Waiver Program Services" (known as the Minimum Operating Standards) document. This document defines both general and specific operating criteria for the program. All waiver agencies and service providers are subject to the standards, definitions, limits, and procedures described therein.

For each service offered in MI Choice, the Minimum Operating Standards are used to set the minimum qualifications for all direct service providers, including required certifications, training, experience, supervision, and applicable service requirements. Billing codes and units are also defined in the document.

Moreover, the Minimum Operating Standards for the MI Choice program referenced in the MPM provide in part:

D. TRANSFERRING MI CHOICE PARTICIPANTS TO ANOTHER WAIVER AGENCY

MDHHS ensures participants have a choice of a waiver agency, as available, to coordinate MI Choice services. A participant may choose to transfer enrollment from one waiver agency to another, as available within the region where he or she lives, or a participant may move to another region of the state. Waiver agencies are responsible for managing transfers of participants to other agencies or accepting transfers from another agency.

Requirements

1. Waiver agencies ensure that participants are transferred from one agency to another, preserving continuity of care and the integrity of the participant's preferences and person-centered plan.
2. The new waiver agency should perform an initial assessment. This may include an LOCD if an active LOCD is not available in CHAMPS or the participant has significant changes. The new waiver agency must either enter an LOCD in CHAMPS or adopt the current LOCD as specified in LOCD policy for the transferred participant within 14 calendar days after the date of the participant's enrollment in the new waiver agency's program or otherwise according to MDHHS NFLOC Determination policy.
3. The new waiver agency for each transferred participant must not reimburse providers for delivered MI Choice services authorized by a previous waiver agency. The new waiver agency reviews PCSP activity and authorizes a new PCSP with the participant.
4. The waiver agency the participant transferred from is responsible for closing the participant enrollment at that agency so that the new agency can enroll the participant in its MI Choice program. The waiver agency the participant transferred from is responsible for entering disenrollment information in CHAMPS so that the waiver

agency the participant is transferring to may enter enrollment information in CHAMPS.

*Attachment K, FY 2021, pages 40-41
Exhibit #7, pages 1-2*

C. Procedures for Disenrollment

* * *

2. The following are cause for disenrollment

- a. The enrollee moves out of PAHP's service area

*Attachment C, FY 2021, page 20
Exhibit #8, page 2*

Here, Respondent terminated Petitioner's services pursuant to the above policies and on the grounds that Petitioner had moved out of Respondent's service area and was transitioning to another PAHP.

In appealing the decision, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in terminating his services. Moreover, the undersigned ALJ is limited to reviewing Respondent's actions in light of the information available at the time the decision was made.

Given the available information and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet that burden of proof and Respondent's decision must therefore be affirmed. Respondent's evidence credibly demonstrates that it complied with the above policies by both working with Petitioner and DAAA to transfer his case to the other waiver agency and disenrolling Petitioner from its program after he moved out of Respondent's service area and needed to be enrolled with DAAA. Moreover, Petitioner's testimony may completely contradict the evidence offered by Respondent, but the undersigned Administrative Law Judge ultimately does not find Petitioner persuasive. Respondent's progress notes were completed contemporaneously with the actions in dispute while Petitioner's testimony is both unsupported and completely lacking any details, such as who he talked to and on what dates, that would lend it credibility.

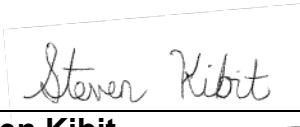
DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

SK/tem


Steven Kibit
Administrative Law Judge

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

Petitioner

[REDACTED]
[REDACTED]
MI

DHHS -Dept Contact

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

Community Health Rep

Lori Smith
Area Agency on Aging 1B
29100 Northwestern Hwy Ste 400
Southfield, MI 48034