

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: September 13, 2022  
MOAHR Docket No.: 22-003293  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on September 1, 2022. [REDACTED], Petitioner's Granddaughter, appeared on behalf of the Petitioner. Kristi Reiber, Quality Manager, appeared on behalf of Respondent, Region VIII (Department). Monica Freier, Deputy Director, and Jackie Gilles, Contract Manager, observed the proceeding.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

**ISSUE**

Did the Department properly deny Petitioner's request for Community Living Support (CLS) services at Coleman Fields Assisted Living, an Adult Foster Care (AFC) placement?

**FINDINGS OF FACT**

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

1. For several years, Petitioner resided at [REDACTED] and received CLS services from Respondent. (Testimony.)
2. Prior to June 14, 2022, [REDACTED] had their contract with Respondent terminated. (Testimony.)

3. On June 14, 2022, Respondent sent Petitioner a notice indicating she had 30 days to find a new AFC home in order to continue receiving CLS services. The Respondent provided Petitioner with a list of homes having a contract with Respondent. (Testimony.)
4. On August 2, 2022, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.

### **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 has been receiving 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).

Medicaid policy in Michigan is contained in the Medicaid Provider Manual (MPM). With regard to the MI Choice Waiver program, the MPM provides, in part:

### **SECTION 1 - GENERAL INFORMATION**

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 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 & Medicaid Services (CMS) under section 1915(c) and section 1915(b) 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 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. MDHHS will not enact any provision to the MI Choice program that prohibits or inhibits a participant's access to a person-centered plan of service, 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.<sup>1</sup>

The Department indicated their contract with the AFC home Petitioner resided at was terminated and Petitioner would have to transition to a new AFC that had a contract with the Department. The Department relied on the contract language found in the Minimum Operating Standards for MI Choice Services that required in-network providers to have an agreement with the waiver agency to provide necessary services.

Petitioner did not dispute the contract language or provide any legal argument to support their request to remain in the Coleman Fields Assisted Living facility. Petitioner and the Department did, however, engage in some dialogue regarding other assisted living facilities.

Based on the evidence presented, Petitioner did not meet their burden of proof to show the Department's actions were not in conformity with the applicable laws and policies. Consequently, I have no choice but to affirm the Department's decision in this matter.

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<sup>1</sup> Medicaid Provider Manual, MI Choice Waiver Chapter, July 1, 2018, p 1.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the MI Choice Waiver agency properly denied Petitioner's request for services in a non-contracted facility.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

CA/dh

*J. Arendt*  
Corey Arendt  
Administrative Law Judge

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**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

Via Electronic Mail:

**DHHS Department Rep.**

Heather Hill  
400 S. Pine, 5<sup>th</sup> Floor  
Lansing, MI 48933  
[HillH3@michigan.gov](mailto:HillH3@michigan.gov)

**DHHS Department Contact**

Elizabeth Gallagher  
400 S. Pine, 5<sup>th</sup> Floor  
Lansing, MI 48909  
[GallagherE@michigan.gov](mailto:GallagherE@michigan.gov)

**Community Health Rep.**

Region VII Area Agency on Aging  
1615 Euclid Ave  
Bay City, MI 48706  
[freierm@region7aaa.org](mailto:freierm@region7aaa.org)

Via First Class Mail:

**Authorized Hearing Rep.**

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

**Petitioner**

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