



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Date Mailed: November 18, 2024
MOAHR Docket No.: 24-010066
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

On September 12, 2024, Petitioner [REDACTED] requested a hearing to dispute Medicaid services. As a result, a hearing was scheduled to be held on November 13, 2024, pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; and Mich Admin Code, R 792.11002.

The parties appeared for the scheduled hearing. Petitioner appeared and represented himself. Petitioner had his father, [REDACTED] assist him. Petitioner had his mother, [REDACTED] appear as a witness, and Petitioner had his therapist, Wendy Briseno, appear as a witness. Respondent Senior Resources of West Michigan had MI Choice Waiver Director Sheyenne Cole appear as its representative. Respondent had Quality Improvement Coordinator Jan Hall and RN Supervisor Karla Dawes appear as witnesses.

Sworn testimony was taken from both parties, and one exhibit was admitted into evidence. A 24-page packet of documents provided by Respondent was admitted into evidence as Exhibit A.

ISSUE

Did Respondent properly disenroll Petitioner from the MI Choice Waiver program?

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 MI Choice Waiver program participant.
2. Respondent is a Prepaid Ambulatory Health Plan that has been contracted by the Michigan Department of Health and Human Services to provide services to MI Choice Waiver participants in Muskegon, Oceana, and Ottawa counties.

3. Respondent has been providing services for Petitioner through the MI Choice Waiver program.
4. Upon Petitioner's enrollment in the MI Choice Waiver program, Respondent reviewed Petitioner's rights and responsibilities with Petitioner, and Respondent provided Petitioner with a handbook. The handbook contained a section titled "Your Responsibilities." That section stated in pertinent part, "make sure your home is safe and non-threatening for people who are helping you. This includes: being respectful to workers who come into your home; not verbally or physically abusing the people trying to assist you; [and] not using profane or offensive language toward the people who are trying to help you"
5. Petitioner signed an acknowledgement that he had reviewed his rights and responsibilities, and he signed an acknowledgement that he agreed to comply.
6. In June 2024, Petitioner was hospitalized after he suffered life-threatening injuries from a violent attack that occurred in his home.
7. Respondent determined that Petitioner's home was not a safe place due to risky behaviors that Petitioner was engaged in.
8. Respondent decided that it could not continue to provide services for Petitioner unless Petitioner agreed to ensure that his home would be a safe place.
9. Respondent required Petitioner to sign an informed risk agreement before Respondent would agree to continue to provide services for Petitioner.
10. The informed risk agreement identified the risks that Respondent was concerned about. It stated, "[Petitioner] has a history of consuming alcoholic beverages in excess in his home. [Petitioner] has a diagnosis of quadriplegia and requires assistance to complete daily care tasks. [Petitioner] relies on agency staff to assist with his daily care tasks. Identified risks include lack of assistance with personal care and inability to call for help. Due to multiple previous incidents in [Petitioner's] home, the following must be complied with: Alexis is not allowed on the premises when agency staff are present; agency caregivers cannot purchase alcohol for [Petitioner]; [Petitioner] cannot consume alcohol when the agency caregivers are present in [Petitioner's] home with [Petitioner]; [Petitioner] must comply with the responsibilities as a MI Choice Waiver participant – if you are not compliant, disenrollment from the MI Choice Waiver program will occur."
11. The informed risk agreement described the negative outcome/harm that may result to Petitioner. It stated, "decreased ability to complete daily care tasks; decreased ability to call for help if needed; decrease or loss of assistance through community living supports; and increased risk of falls and other negative health outcomes (ex: stroke, heart disease, high blood pressure, liver disease)."

12. On July 22, 2024, Doctor Saleh Dyke wrote a letter to Petitioner to advise him to abstain from consuming alcohol.
13. On July 23, 2024, Petitioner signed the informed risk agreement.
14. On August 5, 2024, Petitioner was intoxicated while agency caregivers were present and assisting Petitioner in his home. Petitioner had a bottle of alcohol that his mother poured out. Petitioner was yelling, agitated, and screaming for agency caregivers to provide him with alcohol. Agency caregivers did not feel safe providing services for Petitioner in his home, so they refused.
15. On August 7, 2024, Respondent contacted the Michigan Department of Health and Human Services. Respondent notified the Department that it wanted to disenroll Petitioner from the MI Choice Waiver program due to his non-compliance with the informed risk agreement, and Respondent asked the Department if it would support Respondent's decision. The Department replied that it supported Respondent's decision.
16. On August 8, 2024, Respondent mailed an adverse benefit notice to Petitioner to notify him that Respondent was going to disenroll him from the MI Choice Waiver program for failing to comply with his rights and responsibilities as a MI Choice Waiver participant and for failing to comply with the informed risk agreement. Respondent notified Petitioner that he was going to be disenrolled effective August 17, 2024.
17. Petitioner asked Respondent for an internal appeal.
18. On September 3, 2024, Respondent mailed a notice of internal appeal decision that denied Petitioner's internal appeal.
19. Petitioner requested a hearing to dispute Respondent's decision to disenroll him from the MI Choice Waiver program.
20. Petitioner acknowledged that he has problems, including an unhealthy relationship with alcohol.

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

MI Choice is a waiver program operated by the Michigan Department of Health and Human Services 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. *MDHHS Medicaid Provider Manual* (October 1, 2024), MI Choice Waiver Chapter, Section 1. The waiver is approved by the Centers for Medicare and Medicaid Services (CMS) under Sections 1915(b) and 1915(c) of the Social Security Act. *Id.* MDHHS carries out its waiver obligations through a network of enrolled providers that operate as Prepaid Ambulatory Health Plans. *Id.* 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. *Id.*

In this case, Petitioner was enrolled to receive services through the MI Choice Waiver program from Respondent, and Respondent decided to disenroll Petitioner from the MI Choice Waiver program. Petitioner is disputing Respondent's decision to disenroll Petitioner from the MI Choice Waiver program.

A MI Choice Waiver agency may close a participant's case. *Id.* at Section 3.10. A MI Choice Waiver agency may close a participant's case when the participant refuses services, for cause, and for various other reasons. *Id.* Respondent closed Petitioner's case when Respondent disenrolled Petitioner from the MI Choice Waiver program. Respondent disenrolled Petitioner because Respondent determined that Petitioner failed to comply with his rights and responsibilities as a MI Choice Waiver participant and failed to comply with the informed risk agreement. Petitioner did not dispute that he failed to comply with his rights and responsibilities as a MI Choice Waiver participant and failed to comply with the informed risk agreement. Rather, Petitioner acknowledged that he has problems, including an unhealthy relationship with alcohol. Petitioner asserted that he is trying to change, and he wants to continue to receive services through Respondent.

Services provided by a MI Choice Waiver agency are documented in a person-centered service plan. *Id.* at Section 6. The service plan is developed in coordination with the participant, taking into account the participant's preferences and needs. *Id.* MI Choice Waiver agencies are required to assist participants in managing risks. *Id.* at Section 6.4.A.1. Risk management is part of assuring the health and welfare of participants. *Id.* The identification of potential risks to participants and the development of strategies to mitigate such risks are integral to enabling participants to live as they choose in the community while assuring their health and welfare. *Id.* Waiver agencies may require participants to acknowledge when their choices pose risks for their health and welfare. *Id.*

Respondent identified Petitioner's alcohol use as a risk to Petitioner's health and welfare, and Respondent required Petitioner to sign an informed risk agreement. The informed risk agreement specifically informed Petitioner that his alcohol use was a risk to Petitioner's health; it informed Petitioner that he was required to abstain from consuming alcohol while agency caregivers were present in his home; it informed Petitioner that agency caregivers could not purchase alcohol for Petitioner; it informed Petitioner that he was required to comply with his responsibilities as a MI Choice Waiver participant; and it informed Petitioner that Respondent could disenroll Petitioner from

the MI Choice Waiver program for non-compliance. After Petitioner signed the informed risk agreement, Petitioner continued to use alcohol, and Petitioner's alcohol use created a threatening environment for environment for agency caregivers.

On August 5, 2024, Petitioner was intoxicated while agency caregivers were present and assisting Petitioner in his home. Petitioner had a bottle of alcohol that his mother poured out. Petitioner was yelling, agitated, and screaming for agency caregivers to provide him with alcohol. Agency caregivers did not feel safe providing services for Petitioner in his home, so they refused to go in the home. Respondent disenrolled Petitioner from the MI Choice Waiver Program as a result of Petitioner's conduct on August 5, 2024.

Petitioner bears the burden to prove that Respondent did not properly disenroll Petitioner from the MI Choice Waiver program, and Petitioner has not met his burden. Petitioner did not present sufficient evidence to establish that Respondent did not act in accordance with the Michigan Medicaid Provider Manual or any other applicable policy, rule, or law. Accordingly, Respondent's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly disenrolled Petitioner from the MI Choice Waiver program.

IT IS ORDERED that Respondent's decision is **AFFIRMED**.



Jeffrey Kemm
Administrative Law Judge

JK/pe

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 and
First Class Mail:**

Petitioner

[REDACTED]
MI [REDACTED]
[REDACTED]

Via Electronic Mail:

DHHS Department Representative

Heather Hill
MDHHS
400 S. Pine, 5th Floor
Lansing, MI 48933
HillH3@michigan.gov

Community Health Representative

Senior Resources of West Michigan
c/o Sheyenne Cole
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Muskegon, MI 49444
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