

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2009-20538 EDW

██████████,

Appellant

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. ██████████ was represented by ██████████.

██████████ for ██████████, appeared on behalf of the Department-contracted MI Choice waiver agency (hereafter, 'Department').

ISSUE

Did the Department properly place the Appellant on the waitlist for the MI Choice Waiver program?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence on the whole record, I find as material fact:

1. On ██████████, the Appellant requested MI Choice Waiver services.
2. The Appellant was notified on ██████████, that the MI Choice Waiver program was at capacity, thus he would be placed on the waiting list.
3. The Department's waiver agency is currently at capacity and, due to lack of funds, is unable to enroll Appellant in the MI Choice Waiver program at this time.
4. The Appellant requested a formal, administrative hearing on ██████████.

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 Appellant is claiming 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 Community Health (Department). Regional agencies, in this case an Area Agency on Aging (AAA), 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)*

The U.S. Department of Health and Human Services, on page 5 of a letter to State Medical Directors labeled Olmstead Update Number 4 (SMDL #01-006), dated January 10, 2001, in reply to the following question responded, in part:

May a State use the program's funding appropriation to specify the total number of people eligible for an HCBS waiver?

CMS has allowed States to indicate that the total number of people to be served may be the lesser of either (a) a specific number pre-determined by the State and approved by CMS (the approved "factor C" value), or (b) a number derived from the amount of money the legislature has made available (together with corresponding Federal match). The current HCBS waiver preprint contains both options....

The waiver agency has committed all the financial resources made available through the Department's appropriations and to ensure continued service to current waiver enrollees and is not assessing any additional individuals. It maintains a waiting list and contacts

individuals on the list on a first come, first served basis when sufficient resources become available to serve additional individuals. It then determines how many individuals from the list it can assess and assesses a limited number of individuals from the list to determine if they may be eligible for enrollment in the MI Choice waiver.

The Appellant testified, through his representative, he did not receive notification of the Department's actions. The Department countered that notice was sent as evidenced by the fact that the hearing rights and information was provided therein and a hearing requested and thereafter scheduled. The Appellant otherwise offered no legal challenge to the Department's determination that he must be placed on a waiting list due to the constraints in funding the MI Choice waiver program.

This ALJ reviewed the evidence of record to determine if the Department action must be reversed. No evidence was presented indicating the Appellant meets any of the 3 priority categories, consisting of those transitioning out of nursing facility, those with current involvement with Adult Protective Services and those aging out of Children's Special Health Care Services. Without meeting one of the priority categories, the applicants are placed on the waiting list in the order their telephone calls are received, therefore the Department's action was proper.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find the MI Choice waiver agency properly denied Appellant enrollment and placed him on the waiting list due to limited financial resources.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 7/14/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.