

**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. 2009-15199 EDW**

██████████,

**Appellant**

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████-██████████ represented the Appellant. ██████████, intake specialist, represented the Department's waiver agency. She had no witnesses. Also in attendance was the Appellant's physical therapist, ██████████.

**ISSUE**

Did the Department properly place the Appellant on the waitlist for 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. At the time of hearing the Appellant is a ██████-year-old 2C spend down Medicaid beneficiary.
2. On ██████████, the Appellant contacted the ██████████ to request MI Choice waiver services.
3. The Appellant was screened as eligible under the TIG guidelines and placed on the waiting list. (Department's Exhibit A, pp. 3 – 8)
4. The Appellant was notified of her placement on the waiting list by adequate action notice on ██████████. (Department's Exhibit A, p. 2)

5. The Department's waiver agency is currently at capacity for lack of funds and is unable to enroll the Appellant in the MI Choice waiver at this time.
6. The instant request for hearing was received by SOAHR on ██████████  
██████████ (Appellant's Exhibit #1)

### **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 the ██████████, 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 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.

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The Appellant's representative testified that her mother needs help and that she did not get any telephone numbers for alternative resources at the time of the telephone assessment. The Appellant's representative provided no proofs to challenge the Department's capacity assertion.

The Department witness testified that the Appellant did not meet any of the priority exceptions so she was placed on the waiting list in chronological order by date service was requested – in this case [REDACTED]

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that MI Choice waiver agency properly denied further assessment of the Appellant due to limited financial resources.

**IT IS THEREFORE ORDERED** that:

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

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Dale Malewska  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

**Docket No. 2009-15199**  
**Hearing Decision & Order**

cc:



Date Mailed: 4/23/2009

**\*\*\* 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.