

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2009-24296 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.*, following the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. ██████████ appeared as Authorized Representative for ██████████ (Appellant).

██, appeared on behalf of the ██████████, a 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's son, contacted the Department-contracted waiver agency for enrollment of the Appellant in the MI Choice Waiver program. The Appellant's son answered questions at which time the Appellant passed the Telephone Intake Guidelines eligibility screen. The Appellant's son was notified at that time that the program was at capacity and that the Appellant would be placed on the waiting list. Referrals were provided to the ██████████, another MI Choice agent that serves the region in which the Appellant resides, as well as to visiting physician services. The Appellant's son was also advised to request additional home help services hours from the local Department of Human Services office.

2. On ██████████, an Adequate Action Notice was issued to the Appellant indicating that the program was at capacity and informing her of her right to appeal the agency's decision.
3. The Department's waiver agency, in this case, ██████████, 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. On ██████████, the Appellant filed her Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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.


A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfies that burden must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

The Appellant’s son and Authorized Representative testified the Appellant suffers from a number of health conditions, and that she needs assistance. He otherwise presented no significant challenge to the waiver agency’s assertion that it is currently at capacity and, as a result, the Appellant must, by policy, be placed on the waitlist.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the MI Choice Waiver agency properly denied Appellant enrollment due to limited financial resources.


Docket No. 2009-24296 EDW
Decision and Order

IT IS THEREFORE ORDERED that:

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

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 8/13/2009

***** 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.