

**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. 2009-28231 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 ██████████. ██████████ appeared and testified on his own behalf. ██████████, represented the Department's waiver agency.

ISSUE

Did the Department properly determine that it could not assess the Appellant for the MIChoice 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. The Department contracts with the Area Agency on ██████████ (the Waiver Agency) to provide MI Choice Waiver services for the eligible beneficiaries who are elderly and disabled.
2. On ██████████, Appellant requested MI Choice Waiver services.
3. Appellant passed the Telephone Intake Guidelines eligibility screen.
4. On ██████████ notified Appellant in writing that the agency is unable to assess him for MI Choice Medicaid Waiver services due to the program being at capacity; and although Appellant passed the Telephone Intake Guidelines (TIG) screen he would be placed on the MI Choice wait list. (Exhibit 1, p. 7)

5. On [REDACTED], the State Office of Administrative Hearings & Rules received Appellant's hearing request, protesting the Waiver Agency's decision to place him on its waiting list for MI Choice Waiver Services.

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 requested 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 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, and 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....

In this case, Appellant made a request for MI Choice Waiver services. [REDACTED] testified that the Waiver Agency is at capacity for MI Choice waiver enrollees, and in order to ensure continued services to current waiver enrollees, the agency could not assess Appellant for waiver services. The Waiver Agency 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 evidence in this case demonstrates that the MI Choice Waiver Agency maintains a waiting list as allowed by the federal government. The MI Choice Waiver Agency established that it implemented the MI Choice waiting list procedure in the manner in which CMS has approved, and in accordance with Department policy. Therefore, its actions were proper. This Administrative Law Judge does not have the authority to overrule or make exceptions to the applicable law and policy.

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 assessment of the Appellant for MI Choice Waiver Services and placed him on a waiting list, due to limited financial resources.

IT IS THEREFORE ORDERED that:

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

Marya Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

[REDACTED]
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Date Mailed: 9/2/2009

***** 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.