

**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. 2009-28232 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. ██████████, represented the Department's waiver agency.

ISSUE

Did the Department properly determine that it could not assess the Appellant 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. The Department contracts with ██████████ to provide MI Choice Waiver services to eligible beneficiaries.
2. The Appellant is an ██████████ woman with leg pain and arthritis. (Exhibit 2).
3. The Appellant's representative/husband made a request for MI Choice Waiver services on ██████████. The ██████████ conducted a telephone screen with the Appellant regarding the request. (Exhibit 1, p 3).
4. On ██████████, ██████████ notified the Appellant in writing that the MI Choice Waiver program was at program capacity and she would be placed on the Waiver Enrollment Waiting List. (Exhibit 1, p 2).

5. On ██████████, the Department received a request for hearing from the Appellant. (Exhibit 2).

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 ██████████ 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 MI Choice representative testified that the waiver agency is at capacity for MI Choice waiver enrollees. It maintains a waiting list and contacts individuals on the list on a priority and first come, first served basis when sufficient resources become available to serve additional individuals.

During the hearing the MI Choice representative said that it appeared the Appellant met the criteria for a MI Choice Waiver assessment and explained that it followed the *Medical Services Administration Policy Bulletin 05-21, April 2005, pages 1-2 of 5.*

The MI Choice waiting list policy, in pertinent part:

Any person who expresses interest in the MI Choice Program must be evaluated by telephone using the Telephone Intake Guidelines (TIG) at the time of her or her request. If the person is seeking services for another, the MI Choice Program agent shall either:

- Contact the person for whom services are being requested, or

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- Complete the TIG to the extent possible using information known to the caller.

Applicants to the program who are determined presumptively eligible based on financial criteria and the TIG must be offered a face-to-face evaluation within seven days if the MI Choice Program is accepting new participants. Applicants who are determined presumptively eligible when new participants are not being accepted must immediately be placed on the MI Choice Program Waiting List. If an applicant who is determined presumptively eligible through the TIG screening process does not receive a face-to-face evaluation within seven days, the person shall be placed on the Waiting List based on the priority category, chronologically by date of the original request for services. Contact logs will no longer be used.

Applicants who are determined ineligible based on telephonic screen information may request a face-to-face evaluation using the Michigan Medicaid Nursing Facility Level of Care Determination and financial eligibility criteria. MI Choice Program agents must issue an adverse action notice and advise applicants of her or her appeal rights when the applicant has been determined ineligible either through telephonic screening or face-to-face evaluation.

When an applicant appears to be eligible based on the TIG, but does not appear to meet financial eligibility requirements, the MI Choice Program agent must allow the applicant a place on the waiting list if it appears that she or she may become financially eligible within 60 days.

Each MI Choice Program agent will maintain a Waiting List for its service area. Applicants will be placed on the Waiting List chronologically (by the date of request for services) by priority category (when known). Available slots are then assigned on a first come/first served basis using the following categories, listed in descending order of priority:

- Persons no longer eligible for Children's Special Health Care Services (CSHCS) because of age. This category includes only persons who continue to need Private Duty Nursing care at the time coverage ended under CSHCS.
- Nursing Facility Transition participants. A given number of program slots will be targeted by MDCH each year to accommodate nursing facility transfers. Nursing facility residents are a priority only until the enrollment target established by MDCH has been reached.
- Current Adult Protective Services (APS) clients. When an applicant who has an active APS case requests services,

priority should be given when critical needs can be addressed by MI Choice Program services. It is not expected that MI Choice Program agents seek out and elicit APS cases, but make them a priority when appropriate.

- Chronological Order by Date Services Were Requested. This category includes potential participants who do not meet any of the above priority categories and those for whom prioritizing information is not known.

Each Waiting List identifies applicants who have been presumed eligible based on the Telephone Intake Guidelines (or the Michigan Medicaid Nursing Facility Level of Care Determination) by priority category, and then in chronological order by date of service request. A service request date is defined as a contact by a person requesting services, or someone on her or her behalf, to the Waiver Agent voicing an interest in MI Choice Program services. (Exhibit 1).

The Appellant's representative/husband said he understood at the time of the intake about the waiting list but he needed information on other resources, yet had not received any from the MI Choice Waiver agency. The MI Choice representative said Appellant also had been put on a waiting list for an alternative program. The MI Choice representative said she would send out information about other community resources immediately following the hearing.

The MI Choice Waiver agency provided sufficient evidence that it implemented the MI Choice waiting list procedure in the manner in which CMS has approved and in accordance to Department policy; therefore, its actions were proper.

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 due to limited financial resources and placed the Appellant on the waiting list.

IT IS THEREFORE ORDERED that:

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

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

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CC:



Date Mailed: 9/15/2009

***** 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.