

**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. 2009-37290 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 a ██████████ man with COPD.
3. The Appellant's representative/sister made a request for MI Choice Waiver services on ██████████. The ██████████ conducted a telephone screen with the Appellant regarding the request. (Exhibit 1).
4. On ██████████, ██████████ notified the Appellant in writing that the MI Choice Waiver program was at program capacity and he would be placed on the Waiver Enrollment Waiting List. (Exhibits 1, p 3 and 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 from the telephone intake it appeared the Appellant met the criteria for a MI Choice Waiver assessment. The MI Choice representative testified that the ██████ followed Department Medicaid policy during the telephone intake and when it placed her on the waiting list.

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 his 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 complete the TIG to the extent possible using information known to the caller.

Applicants to the program who are determine(d) presumptively eligible based on financial criteria and the TIG must be offered an in-person Michigan Medicaid Nursing Facility LOC Determination within seven days if the MI Choice Waiver Program is accepting new participants. Applicants who are determined presumptively eligible when the MI Choice Waiver Program is not accepting new participants must immediately be placed on the MI Choice Program Waiting List in chronological order, as defined under Waiting List Reporting.

*MI Choice Waiver Program Eligibility and Admission Process,  
May 2008, page 4 of 6.*

The Appellant's representative/sister said since the Appellant was placed on the waiting list his situation has changed and he is more at risk living on his own. The MI Choice representative and Appellant's representative discussed imminent risk assessments and reviews of current changes to medical conditions or living situations.

The MI Choice representative testified that an individual can be prioritized, but they applied the priority categories to the Appellant's case at the time of the telephone of telephone intake and he did not meet a priority category. The MI Choice representative testified that the ██████ used *Policy Bulletin 09-47* when making its determination. A review of *Policy Bulletin 09-47* and application to Appellant finds that the ██████ properly determined the Appellant did not meet any exception from the chronological waiting list. The pertinent section of *Policy Bulletin 09-47*:

The following delineates the current waiting list priority categories and their associated definitions. They are 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.

### **Updates**

Below are the two waiting list priority categories that have been updated. The updated categories will also be available on the MDCH website at [www.michigan.gov/medicaidproviders](http://www.michigan.gov/medicaidproviders) >> Prior Authorization >> The Medicaid Nursing Facility Level of Care Determination >> MI Choice Eligibility and Admission Process.

### **Nursing Facility Transition Participants**

Nursing facility residents who face barriers that exceed the capacity of the nursing facility routine discharge planning process qualify for this priority status. Qualified persons who desire to transition to the community are eligible to receive assistance with supports coordination, transition activities, and transition costs.

### **Current Adult Protective Services (APS) Clients and Diversion Applicants**

When an applicant who has an active APS case requests services, priority is given when critical needs can be addressed by MI Choice Waiver services. It is not expected that MI Choice Waiver agents solicit APS cases, but priority should be given when appropriate.

An applicant is eligible for diversion status if they are living in the community or are being released from an acute care setting and are found to be at imminent risk of nursing facility admission. Imminent risk of placement in a nursing facility is determined using the Imminent Risk Assessment, an evaluation approved by MDCH. Supports coordinators administer the evaluation in person, and final approval of a

diversion request is made by MDCH.

*Medical Services Administration Policy Bulletin 09-47,  
October 2009, pages 1-2 of 3.*

The MI Choice representative and this Administrative Law Judge are bound by the MI Choice program policy. In addition, this Administrative Law Judge possesses no equitable jurisdiction to grant exceptions to Medicaid, Department and MI Choice program policy.

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 and placed the Appellant on the waiting list.

**IT IS THEREFORE ORDERED** that:

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

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

cc: 

Date Mailed: 12/22/2009

**\*\*\* 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.