

**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. 2009-37292 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. ██████████, access supervisor, 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 Appellant is a ██████████, Medicare beneficiary seeking MI Choice. (Appellant's Exhibit #1)
2. The Appellant is afflicted with dementia, DM, COPD, macular degeneration, the residuals of stroke, depression and pneumonia. (Department's Exhibit A – throughout)
3. Her representative contacted the ██████████ requesting MI Choice Waiver services. On ██████████ the Appellant passed the intake questions. (Department's Exhibit A, pp. 6, 7, 8)
4. The Appellant was notified that the MI Choice Waiver program was at capacity, thus she would be placed on the waiting list. (Department's Exhibit A, pp. 2, 4)

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5. Following notification of program capacity the Appellant requested an administrative hearing on ██████████. (Appellant's Exhibit #1)
6. A post application imminent risk (IR) assessment conducted by ██████████ on ██████████ verified that the Appellant did not qualify for diversion as she screened ineligible under the IR assessment tool. (See Testimony).

**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 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....

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The waiver agency has committed all the financial resources made available through the Department's appropriations. To ensure continued service to current waiver enrollees the waiver agency 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.

The Appellant's representative testified that the Appellant needs to be placed in assisted living as she is slated for discharge from the nursing facility on Friday.

The waiver agency witness stated the agency had to establish a waiting list due to its limited resources. She stated the Appellant was placed on the waiting list at the time the telephone call screening was made.

There was no evidence that the Appellant met any of the (3) three priority exception categories, consisting of those transitioning out of nursing facility<sup>1</sup>, those with current involvement with Adult Protective Services and those aging out of Children's Special Health Care Services.

Absent satisfaction of meeting a priority category, applicants are placed on the waiting list in the order their telephone calls are received.

### **DECISION AND ORDER**

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

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<sup>1</sup> The ██████████ waiver agency conducted a post application IR assessment and found the Appellant ineligible under that assessment tool as well. Accordingly, the Appellant did not yet qualify for an exception as one transitioning from a nursing facility. At the time of assessment the Appellant was receiving skilled care and had not undergone discharge planning.

  
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**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

cc:



Date Mailed: 12/10/2009

**\*\*\* 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.