

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

P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 334-9505

**IN THE MATTER OF:**

**Docket No. 2010-46500 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. ██████████ was also present.

██████████, represented the Department's waiver agency, the ██████████.

**ISSUE**

Did the Department's MI Choice Waiver agent properly determine that it could not assess the Appellant for the MI Choice Waiver program and place her on a waiting list?

**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. ██████████ must implement the MI Choice Waiver program in accordance to Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a ██████████ woman who is legally blind. The Appellant lives in her own home.
4. The Appellant's daughter provides informal care for the Appellant.

5. The Appellant's daughter made a request for MI Choice Waiver services for Appellant. On ██████████, an Intake Specialist from ██████████ conducted a telephone screen with the Appellant's daughter. (Exhibit 1, pp 3-8).
6. On ██████████, ██████████ notified the Appellant in writing that the MI Choice Waiver program was at program capacity but she had been placed on the Waiver Enrollment Waiting List. (Exhibit 1, p 9).
7. 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 ██████████, 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 MI Choice Waiver program is at capacity for MI Choice Waiver enrollees. The MI Choice representative said that from the telephone intake it appeared the Appellant did not meet any exception from the chronological waiting list and therefore was placed on the waiting list.

The pertinent section of *Policy Bulletin 09-56* states:

#### **Nursing Facility Transition Participants**

Nursing facility residents who desire to transition to the community, are medically and financially eligible, and require at least one MI Choice service on a continual basis to remain at home or in the community qualify for this priority status 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 09-56,  
November 2009, pages 1-2 of 3.*

The Appellant's daughter explained that the Appellant is legally blind and has difficulty taking care of herself living on her own. The Appellant's daughter further testified that she hoped the Appellant would qualify for the waiver program to avoid the Appellant needing to go into a nursing home. The Appellant's daughter stated that the Appellant receives chore assistance through ██████████, including a person to come in and assist around her home, but that the Appellant needs more days and hours of help than the chore person provides.

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.

The MI Choice representative explained that the MI Choice Waiver agency used *Policy Bulletin 09-56* when making its determination and explained the waiting list procedure, including priority. A review of *Policy Bulletin 09-56* and application to Appellant finds that the ██████████ properly determined the Appellant did not meet any exception from the chronological waiting list.

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**Decision and Order**

The MI Choice agencies 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: 10/18/2010

**\*\*\* 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.