

**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. 2010-12003 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. He had no witnesses. ██████████, access supervisor, represented the Department's waiver agency. She had no witnesses.

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 an ██████████ female seeking MI Choice Waiver services.
2. The Appellant is afflicted with dementia. (Department's Exhibit A, p. 8)
3. On ██████████ the Appellant's representative contacted the Department requesting MI Choice Waiver services.
4. The Appellant was notified that the MI Choice Waiver program was at capacity, thus she would be placed on the waiting list.
5. The Appellant was notified of her placement via Adequate Action notice on ██████████.

██████████
Docket No. 2010-12003 EDW
Hearing Decision & Order

6. On ██████████ the Appellant's DPOA/representative advised that the Appellant had a case with Adult Protective Services. Further investigation showed, however, that her file was no longer active as of ██████████. (See Testimony)
7. Next, the Department conducted an Imminent Risk evaluation on the Appellant which demonstrated that the Appellant was not [presently] a candidate for diversion scoring well below the minimum qualification¹. (See Testimony and Department's Exhibit A, p. 14)
8. The Appellant requested a hearing on ██████████. (Appellant's Exhibit #1)

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 the ██████████, 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:

¹ To qualify for Diversion the Appellant would need to score a minimum of 8 points on a 14 point scale. She scored 3 points. See Department's Exhibit A, at pages 14-15.

Docket No. 2010-12003 EDW
Hearing Decision & Order

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....

The waiver agency has committed all the financial resources made available through the Department's appropriations and to ensure continued service to current waiver enrollees and 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. 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 Appellant's representative testified that his aunt's mental status is deteriorating and he believes she requires higher placement on the waiting list. His evidence was voluminous [a time-line of police reports]. But generally those reports tracked the ebb and flow of her conduct. There was more police conduct when she acted up – it decreased as her actions ameliorated following APS involvement. Even the police officers opined in most of their reports that the Appellant was neat and clean and did not appear to be in danger or a danger to others.

He did not otherwise challenge the legal basis for the decision by the agency.

The waiver agency witness stated the agency had to establish a waiting list due to the limited resources it has to provide services. She stated the Appellant was placed on the waiting list as of the date services were requested, [REDACTED]. She added that the Department followed up on the potential APS information as well as conducting an IR assessment – to no avail. The Appellant failed to qualify for a priority exception and was placed on the waiting list in chronological order.

Without meeting one of the priority exceptions reviewed at hearing, applicants are placed on the waiting list in chronological order.

The Appellant, through her representative, received several suggested alternative services and referrals.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 2/25/2010

***** 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.