

**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. 2010-17498 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, an in person hearing was held on ██████████, at the Department of Human Services office in ██████████. ██████████ represented the Appellant. He had no witnesses. ██████████ Supervisor, represented the Department's waiver agency. She had no witnesses.

PRELIMINARY MATTER:

At hearing the ALJ took the admission of Appellant's proposed Exhibit #2 under advisement. I find that document is inadmissible as a post petition submission.

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 ██████████ female seeking MI Choice Waiver services.
2. The Appellant is afflicted with OCD, dementia, arthritis, HTN, incontinence, hyperlipemia, CAD, obesity and the residuals of bilateral knee replacement. (Department's Exhibit A, p. 9 and See Testimony)
3. On ██████████, the Appellant's representative contacted the Department requesting MI Choice Waiver services.

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4. The Appellant was notified that the MI Choice Waiver program was at capacity, thus she would be placed on the waiting list.
5. An Imminent Risk inventory was conducted on [REDACTED] and reviewed by Kathy Kueppers, RN, and the Appellant was found to qualify for IR and higher priority on the waitlist. (Department's Exhibit A, pp. 11, 12 and See Testimony of Houghton)
6. The Appellant was notified of her placement via Adequate Action notice on [REDACTED]. (Department's Exhibit A, p. 4)
7. The Appellant requested a hearing on [REDACTED]. (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 [REDACTED] 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:

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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 mother's mental status is deteriorating and he believes she requires some in-home services and higher placement on the waiting list.

His evidence consisted of correcting the Department TIG assessment and IR evaluation as he found two errors on the documents submitted to him from the Agency. At item 12 of the IR assessment he wanted to clarify that the Appellant "yells at [him] all the time." On the TIG report at Door 6 the Appellant's representative wanted to amend the record to reflect that his mother does resist care. He credited her OCD affliction for that resistance.

The Department witness explained that the Appellant was evaluated by phone and on IR and was placed on the priority waiting list in the highest possible ranking following clinical review by nurse ██████████ – still it remains a waiting list. She added that the Appellant was also referred to ██████████) for possible assistance.

The Appellant's representative explained that he is concerned about the level of police contact his mother has generated in the last 5-months, prior to the date of hearing. 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].

The Appellant met a priority exception on IR assessment and clinical review. She was placed on the waiting list in the highest priority available. The errors and omissions identified by the Appellant's representative in the TIG and IR assessment did not change the priority assessment.

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 due to limited financial resources and placed her on the waiting list [in a priority ranking].

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:

[REDACTED]

Date Mailed: 4/22/2010

***** 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.