

**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. 2010-41465 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 ██████████. ██████████ appeared on his own behalf. ██████████, represented the Department's waiver agency, the ██████████.

ISSUE

Did the ██████████ properly determine that he did not meet presumptive eligibility for the MI Choice Waiver due to his income?

Did the ██████████ provide proper notice to the Appellant that he did not meet presumptive eligibility for the MI Choice Waiver due to his income?

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 ██████████ 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 ██████████ man with a history of health problems. (Exhibit 2).

4. The Appellant made a request for MI Choice Waiver services. The ██████████ ██████████ conducted a telephone intake guideline screen with the Appellant regarding the request on ██████████. (Exhibit 1, pages 10-15).
5. During the telephone intake, it was determined that the Appellant's income would exceed the financial eligibility limits and was not expected to decrease to meet the financial eligibility limits in the next 60 days. (Exhibit 1, page 13).
6. On ██████████, the ██████████ notified the Appellant in writing that it was presumed he would not qualify for the MI Choice Waiver program. The ██████████ notice had an incorrect reason for presumptively failing to meet eligibility and therefore failed to inform Appellant of the reason for denial in violation of the federal regulations and state program requirements. (Exhibit 2, page 2).
7. On ██████████, the State Office of Administrative Hearings and Rules 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)*

██████████ properly determined that he did not meet presumptive eligibility for the MI Choice Waiver

The Appellant testified that he had a history of multiple health problems which had worsened since his ██████████ telephone assessment for the MI Choice Waiver program. The Appellant stated that he needed help, and could not afford the deductible to be eligible for Medicaid.

The MI Choice Waiver program representative testified that when the telephone assessment tool was performed for the Appellant it was apparent that his income was too high to be eligible for the program. Because the waiver program determined that the Appellant's income was too high to be eligible or to forward the Appellant's information to the Department of Human Services for a financial eligibility determination, it issued an adequate action notice and notice of hearing rights to the Appellant.

A review of the Department's policy with regard to presumptive financial eligibility demonstrates that the ██████████ action was in accordance with policy. The relevant policy is as follows:

If an applicant is presumed medically/functionally eligible based on the TIG, but is presumed financially ineligible based on the TIG, the applicant must be placed on the Waiting List in chronological order if the applicant is presumed to become financially eligible within 60 days.

*MI Choice Waiver Program Eligibility and Admission Process,
January 2010, Page 4.*

Applying the facts in this case to the policy shows that during the telephone screen, the agency used the proper telephone intake guideline form, which elicited from the Appellant information that his gross income was greater than 300% of SSI and that his gross income was not expected to decrease in the next 60 days. (Exhibit 1, page 13). Because the agency elicited information about the Appellant's gross income and was notified his income exceeded financial eligibility limits and was not expected to decrease in the next 60 days, the agency's determination was proper.

The ██████████ failure to send Appellant a notice listing the inaccurate reason he was determined presumptively ineligible demonstrates non-compliance with federal regulation, the MI Choice program waiver, its contract with the Department, legal settlement agreement and Department policy.

Policy Bulletin MSA 05-21, outlined the obligation of a MI Choice Waiver Agent to issue a written proper notice to applicants effective May 2005. Each of the MI Choice Waiver Agents the Department contracts with is paid for implementing the program and is

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responsible for being aware of and complying with program updates. As part of its contract the ██████████ must comply with Department policy, which as articulated beginning in 2005 requires:

An adverse action notice **must be provided** to any applicant **at the time they have been placed on the Waiting List**. Required language for these notices is on the MDCH website at www.michigan.gov/mdch, select "Providers," select "Information for Medicaid Providers," select "Michigan Medicaid Nursing Facility Level of Care Determination."
(Bold emphasis added).

Federal regulation requires notices of action to state the reason the action was taken. *42 CFR 431.210*. A comparison of the ██████████ notice, to the reason listed on the telephone intake guideline form and stated at hearing, shows that the ██████████ failed to issue a notice listing an accurate reason. The evidence of record demonstrates that the Appellant was denied eligibility based on presumptive financial eligibility, while the adequate action notice sent by the agency states that he did not "appear to qualify" under any of the medical functional level of care criteria.

During the hearing the ██████████ representative testified that the Michigan Department of Community Health only gave the ██████████ one adequate action notice template and therefore she had no choice but to use a notice that stated a person was not eligible based on medical functional level of care determination criteria. In a further response, the agency representative admitted that the adequate action notice form was in an electronic format whose text could be altered to tailor the reason for denial to the actual reason for the agency's denial determination. The ██████████ failure to inform the Appellant of the correct reason for eligibility denial offends the mandates of the federal regulation and is out of compliance with Department policy requirements. In this case the remedy for the defective notice would be to ensure the Appellant had a Medicaid fair hearing, and as a complete Medicaid fair hearing was conducted, there is no need for the agency to reissue the correct adequate action notice.

The Appellant did not provide a preponderance of evidence that he did not meet the presumptive financial eligibility criteria for the MI Choice Waiver Program either in ██████████, or in the 60 days following the date of his telephone intake guideline screen.

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 determined the Appellant did not meet presumptive eligibility for the MI Choice Waiver due to his income.

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IT IS THEREFORE ORDERED that:

The [REDACTED] denial of eligibility for the MI Choice Waiver due to his income is **AFFIRMED**.

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

cc:

[REDACTED]

Date Mailed: 10/4/2010

***** 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.