

**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. 2010-51321 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 and provided testimony.

██████████, represented the Department's waiver agency, the AAA 1-B.

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 AAA 1-B to provide MI Choice Waiver services to eligible beneficiaries.
2. AAA 1-B must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is ██████████ who has Alzheimer's disease.
4. The Appellant's ██████████ provide some informal care for the Appellant.

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5. The Appellant's [REDACTED] made a request for MI Choice Waiver services for Appellant. On [REDACTED], an Intake Specialist from AAA 1-B conducted a telephone screen with the Appellant's [REDACTED]. (Exhibit 1, pp 5-10).
6. On [REDACTED], an Intake Specialist from AAA 1-B conducted an Imminent Risk of Placement in a Nursing Facility Assessment with the Appellant's [REDACTED]. (Exhibit 1, pp 5-10).
7. On [REDACTED], AAA 1-B 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 4).
8. On [REDACTED], 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 The AAA 1-B, 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 the 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. The MI Choice representative explained that Appellant's

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█ sought an entire exception from the waiting list so an Imminent Risk of Placement in a Nursing Facility Assessment was performed. The MI Choice representative testified that because the Appellant did not meet the imminent risk of placement criteria and did not meet any exception from the chronological waiting list she therefore was placed on the chronological waiting list.

The MI Choice representative stated that the waiver agency used current Medicaid policy, *Policy Bulletin 09-47*, when determining whether the Appellant screened eligible and placed on the chronological waiting list. The pertinent section of *Policy Bulletin 09-47* states:

The following delineates the current waiting list priority categories and their associated definitions. They are listed in descending order of priority.

Persons No Longer Eligible for Children's Special Health Care Services (CSHCS) Because of Age This category includes only persons who continue to need Private Duty Nursing care at the time coverage ended under CSHCS.

Nursing Facility Transition Participants A given number of program slots will be targeted by MDCH each year to accommodate nursing facility transfers. Nursing facility residents are a priority only until the enrollment target established by MDCH has been reached.

Current Adult Protective Services (APS) Clients When an applicant who has an active APS case requests services, priority should be given when critical needs can be addressed by MI Choice Program services. It is not expected that MI Choice Program agents seek out and elicit APS cases, but make them a priority when appropriate.

Chronological Order By Date Services Were Requested This category includes potential participants who do not meet any of the above priority categories and those for whom prioritizing information is not known.

Updates

Below are the two waiting list priority categories that have been updated. The updated categories will also be available on the MDCH website at:

www.michigan.gov/medicaidproviders

- >> Prior Authorization
- >> The Medicaid Nursing Facility Level of Care Determination
- >> MI Choice Eligibility and Admission Process.

Nursing Facility Transition Participants

Nursing facility residents who face barriers that exceed the capacity of the nursing facility routine discharge planning process qualify for this priority status. Qualified persons who desire to transition to the community are eligible 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 09-47,
November 2009, pages 1-2 of 3.*

The Appellant's ██████████ explained that the Appellant has Alzheimer's disease and was recently hospitalized because her blood pressure was too high. The Appellant's ██████████ explained that the Appellant has fallen a couple times, and ██████████, and ██████████ tried to care for her but her need for care exceeds the ability of her ██████████. The Appellant's ██████████ further testified that she hoped the Appellant would qualify for an exception to the waiver program waiting list, because she believed the waiting list would take approximately two years before the Appellant could receive services and the Appellant did not have two years to wait.

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 09-47* when making its determination and explained the waiting list procedure, including priority. A review of *Policy Bulletin 09-47* and application to Appellant finds that the AAA 1-B properly determined the Appellant did not meet any exception from the chronological waiting list. A review of the imminent risk assessment demonstrates that the my choice waiver agency asked all the questions required of the imminent risk assessment but the Appellant did not score high enough to meet the imminent risk criteria and avoid the waiting list. (Exhibit 1, pages 11-14).

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 and imminent risk assessment in accordance with 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**.

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

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cc:



Date Mailed: 11/8/2010

***** 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.