

**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. 2011-12181 EDW

████████████████████

Appellant

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. ██████████  
██████████, appeared on the Appellant's behalf. ██████████  
██████████, represented the Department's waiver  
agency. ██████████, appeared as a witness for the  
██████████ Area Agency on Aging.

**ISSUE**

Did the Department's Waiver agency properly propose termination of the Appellant's MI Choice Wavier services case because he is over the income limit?

**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 ██████████ participant in MI Choice Waiver services.
2. On ██████████, the waiver agency completed an Intake screening, reporting monthly income totaling ██████████. (Exhibit 2, page 1)
3. The Appellant was placed on the wait list for the MI Choice Waiver program despite being over the ██████████ income limit. (██████████ Testimony)
4. On ██████████, the waiver agency completed an initial assessment and determined that the Appellant's income was ██████████, which was just over the income limit for the MI Choice Waiver program. (Exhibit 1, page 1; Exhibit 2, page 2)

**Docket No. 2011-12181 EDW**  
**Decision and Order**

5. On [REDACTED], the waiver agency issued a Care Management Notification indicating that the Appellant was not eligible for the MI Choice Waiver program because he exceeds waiver income criteria, the waiver program is at capacity, and still needed were asset verification and filing of a Medicaid application with the Department of Human Services. (Exhibit 1, page 2)
6. A Medicaid application had been submitted and the Department of Human Services opened a case with a monthly deductible. (Exhibit 1, page 1)
7. On [REDACTED], the waiver agency sent the Department of Human Services a Notification of Medicaid Waiver Status indicating that the Appellant had joined the waiver program as of [REDACTED]. (Exhibit 1, page 3)
8. On [REDACTED], the waiver agency sent the Department of Human Services a DHS confirmation letter indicating an effective date of waiver status of [REDACTED]. (Exhibit 1, page 4)
9. The Appellant's income has not changed and remains at \$ [REDACTED]. ([REDACTED] Testimony)
10. On [REDACTED], the Appellant was notified that all Medicaid waiver services would terminate effective [REDACTED], because he is not eligible due to being over the waiver program income limit. (Exhibit 3)
11. The Appellant requested a formal, administrative hearing on [REDACTED].

**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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

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 Health Care Financing Administration to the Michigan Department of Community Health (Department). Regional agencies, in this case the [REDACTED] Area Agency on Aging, function as the

██████████  
**Docket No. 2011-12181 EDW**  
**Decision and Order**

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)*

1915 (c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (*42 CFR 430.25(b)*).

Home and community based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. (*42 CFR 440.180(a)*).

The eligibility requirements for the MI Choice Waiver program can be found in the Bridges Eligibility Manual (BEM), including the requirement that income must be at or below 300% of the SSI Federal Benefit Rate. (Bridges Eligibility Manual (BEM), 106, MA Waiver for Elderly and Disabled, 10/1/2010, Page 3 of 6) In 2011, this was an income limit of \$ ██████████.

In this case, the MI Choice Waiver agency is seeking to terminate the Appellant from the MI Choice Waiver program because he exceeds the income limit for the program. It appears that he was put on the wait list and eventually enrolled in the MI Choice Waiver program in error as he exceeded the income limit at the time of the intake screening and at the time of the initial assessment. The Appellant's income has remained in excess of the limit since he began receiving waiver services. It appears that there was a misunderstanding about MI Choice Waiver eligibility with a monthly Medicaid spend down. (██████████ Testimony and Exhibit 4) However, the termination of the Appellant's MI Choice Waiver services must be upheld because his income exceeds the limit for the program.

The Appellant's ██████████ sent a letter after the telephone hearing proceedings concluded regarding changes to the monthly spend down amount set by the Department of Human Services. She also attached an ██████████ Advance Negative Action Notice regarding closure of the Appellant's Home Help case due to his spend down exceeding his care cost. Unfortunately, this ALJ does not have jurisdiction over these issues as the present hearing is limited to the termination of the Appellant's MI Choice Waiver services. Separate hearings can be requested regarding the

**Docket No. 2011-12181 EDW  
Decision and Order**

Appellant's Medicaid deductible/spend down and his Home Help Services case, if these issues can not be resolved with the Department of Human Services.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's Waiver agency properly proposes termination of the Appellant's MI Choice Wavier services because he is over the income limit.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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Colleen Lack  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 4/1/2011

**\*\*\* NOTICE \*\*\***

The State Office of Administrative Hearing 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 Hearing 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.