

**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. 2011-13350 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 ██████████. ██████████, Appellant's ██████████, represented the Appellant. The Appellant was present.

██████████ represented the Department's waiver agency, the ██████████.

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 ██████████ to provide MI Choice Waiver services to eligible beneficiaries.
2. ██████████ 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 ██████████. The Appellant lives in her own apartment.

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4. The Appellant is an enrolled Medicaid beneficiary.
5. The Appellant is also enrolled in the Department of Human Services Home Health Services Program. The Appellant's relative is paid by the Home Health Services program to provide at least three to four hours of care to the Appellant each day. (Testimony of Appellant's [REDACTED]).
6. On [REDACTED], the Appellant's [REDACTED] made a request for MI Choice Waiver services on behalf of the Appellant.
7. On [REDACTED], an Intake Specialist from [REDACTED] conducted a telephone screen with the Appellant's [REDACTED]. (Exhibit 2).
8. The [REDACTED] has a MI Choice Waiver waiting list. (Exhibit 3).
9. The [REDACTED] attempted to contact the Appellant's [REDACTED] on multiple occasions to obtain information so that an Imminent Risk of Nursing Facility Placement Assessment could be performed. The Appellant's [REDACTED] did not answer the phone and her voice mailbox was full, therefore the information for an Imminent Risk Assessment was never provided and the Appellant was not assessed for imminent risk of nursing facility placement. (Exhibit 1).
10. On [REDACTED], [REDACTED] notified the Appellant in writing that the MI Choice Waiver program was at program capacity and she had been placed on the Waiver Enrollment Waiting List. (Exhibit 3).
11. On [REDACTED], the Department received a request for hearing from the Appellant. In the request for hearing the Appellant indicated she wished for her [REDACTED], to be her representative and provided [REDACTED] number for contact. (Exhibit 4).

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

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(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 MI Choice representative testified that the MI Choice Waiver program was at capacity for MI Choice Waiver enrollees. The MI Choice representative said that after the telephone intake the ██████████ attempted to contact the Appellant's ██████████ on multiple occasions to obtain information so that an Imminent Risk of Nursing Facility Placement Assessment could be performed. The representative explained that the Appellant's ██████████ did not answer the phone and her voice mailbox was full therefore the information for an Imminent Risk Assessment was never provided and the Appellant was not assessed for imminent risk of nursing facility placement.

The *Medical Services Administration Policy Bulletin 05-21, April 2005, pages 1-2 of 5*, outlines the approved evaluation policy and the MI Choice waiting list policy:

Any person who expresses interest in the MI Choice Program must be evaluated by telephone using the Telephone Intake Guidelines (TIG) at the time of her or her request. If the person is seeking services for another, the MI Choice Program agent shall either:

- Contact the person for whom services are being requested, or
- Complete the TIG to the extent possible using information known to the caller.

Applicants to the program who are determined presumptively eligible based on financial criteria and the TIG must be offered a face-to-face evaluation within seven days if the MI Choice Program is accepting new participants. **Applicants who are determined presumptively eligible when new participants are not being accepted must immediately be placed on the MI Choice Program Waiting List.** If an

applicant who is determined presumptively eligible through the TIG screening process does not receive a face-to-face evaluation within seven days, the person shall be placed on the Waiting List based on the priority category, chronologically by date of the original request for services. Contact logs will no longer be used. (Bold emphasis added).

The MI Choice representative explained that the waiver program 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 Appellant's ██████████ explained that she had not been feeling well and that was most likely the reason why she had not checked her voicemail messages or returned the MI Choice Waiver agency's call.

The Appellant's ██████████ testified that the Appellant needs someone to be with her up to nine hours a day because if she needs to sit up she needs someone to help her sit up. The Appellant's ██████████ testified that the Appellant needs a Hoyer lift in order to lift her and that she may have to "go on to oxygen" soon.


The Appellant's ██████████ further testified that the Appellant receives in-home care from the Department of Human Services Home Health Services Program. The Appellant's ██████████ explained that a relative is paid by the Home Health Services Program to provide at least three to four hours of care to the Appellant each day.

The MI Choice representative clarified that the MI Choice Waiver program does not cover somebody to sit with the Appellant at her home in the event she may need to sit up or transfer. The MI Choice representative stated that the Appellant could not have Department of Human Services Home Help Services in the home at the same time that she had Department of Community Health MI Choice Waiver services.

The MI Choice Waiver agency provided sufficient evidence that it implemented the MI Choice waiting list procedure in the manner in which CMS has approved and in accordance to 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 was unable to assess Appellant and instead placed the Appellant on the waiting list.


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IT IS THEREFORE ORDERED that:

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

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 2/28/2011

***** 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.