

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
**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. 2011-32665 EDW  
Case No. 31771397

██████████,

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 daughter/representative, appeared and testified on behalf of ██████████.

██████████, Social Work Supervisor, represented the Department of Community Health's (Department) waiver agency, the Senior Resources Region ██████████-AAA.

**ISSUE**

Did the Department's MI Choice Waiver agency properly determine that it could not immediately 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 Resources Region ██████████-AAA to provide MI Choice Waiver services to eligible beneficiaries.
2. Senior Resources Region ██████████-AAA 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 an ██████████ year-old Medicaid beneficiary.
4. A request for MI Choice Waiver services was made for the Appellant. On ██████████, an Intake Specialist from Senior Resources Region ██████████-AAA conducted a telephone screen with the Appellant's representative ██████████. (Exhibit 1, pp 2-7).

5. On ██████████, Senior Resources Region ██████-AAA 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 8).
6. On ██████ 2011, the Department received a Request for Hearing from the Appellant, signed by Appellant's representative ██████████. (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 Senior Resources, 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 he submitted the intake screening tool that is utilized when a person calls seeking placement in the MI Choice Waiver program. ██████████ testified the intake screen for Appellant was dated ██████████, ██████████, and the Appellant did screen eligible with the telephone intake tool. (Exhibit 1, pp 2-7). ██████████ further testified that because the program has a waiting list the were Appellant was placed on the chronological order waiting list. The Waiver Agency mailed a Capacity Adequate Action Notice (which indicated the MI Choice Program is currently at capacity) and the notice stated the Appellant could appeal the action within 90 days. (Exhibit 1, p 8).

██████████ testified the Appellant did appeal within 90 days to contest placement on the chronological waiting list. ██████████ stated that based on the telephone intake

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Appellant was eligible, but because she has not yet received an assessment a determination had not yet been made whether she would be medically and financially eligible for the waiver program.

██████████ explained they had a waiting list of 534 people at the time; approximately a one year waiting list. ██████████ further explained that from the telephone intake it appeared the Appellant would not qualify for diversion from the chronological waiting list following an imminent risk assessment and therefore she was placed on the chronological waiting list.

The *MI Choice Waiver Program Eligibility and Admission Process, January 2010 version*, outlines the approved evaluation policy and the MI choice waiting list policy:

Any person who expresses interest in the MI Choice Waiver Program must be evaluated by telephone using the TIG at the time of his request. If the person is seeking services for another individual, the MI Choice Waiver 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 who are determine presumptively **eligible** based on the TIG must be offered an in-person Michigan Medicaid Nursing Facility LOC Determination within seven days if the MI Choice Waiver Program is accepting new participants. Applicants who are determined presumptively eligible when the MI Choice Waiver Program is not accepting new participants must immediately be placed on the MI Choice Program Waiting List in chronological order, as defined under Waiting List Reporting.

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.

Applicants who are determined presumptively **ineligible** based on the TIG may request an in-person Michigan Medicaid Nursing Facility LOC Determination and financial eligibility criteria.

The Telephone Intake Guidelines is the only acceptable structured tool for telephonic screening of MI Choice Waiver Program applicants. The financial portion of the Telephone

Intake Guidelines indicates **potential** financial eligibility for the MI Choice Waiver Program.

The TIG is available on the MDCH website.

### **WAITING LIST REPORTING**

If the applicant does not receive an in-person Michigan Medicaid Nursing Facility LOC Determination within seven days, the applicant shall be placed on the Waiting List based on the Priority Category, chronologically by date of the original request for services.

### **PRIORITY CATEGORIES**

#### **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**

Nursing facility residents who desire to transition to the community, are medially and financially eligible, and require at least one MI Choice service on a continual basis to remain at home or in the community qualify for this priority status and 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

**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.

*MI Choice Waiver Program Eligibility and Admission Process, January 2010 pp. 4-5*

The Appellant's representative, ██████████, testified they were in an emergency situation as the Appellant lived at home. ██████████ explained that her sister lived with Appellant and was Appellant's full time caregiver, but her sister had a heart attack on ██████████. ██████████ elaborated that she had Appellant move in with her, but because she works seven days a week and is on call 24 hours as a home manager for senior citizens, she is not able to be home to properly care for Appellant.

██████████ stated Appellant is not able to cook for herself or dispense her own medication; Appellant needs help getting dressed and getting to bed; Appellant needs help showering and has a catheter with a bandage that needs to be changed each day. ██████████ indicated Appellant probably qualifies to be in a nursing home, but Appellant doesn't want to be in a nursing home.

██████████ felt that Appellant was at risk and would be neglected for 12 months waiting to get enrolled into the Medicaid MI Choice waiver program unless she was placed in a nursing home.

██████████ indicated she did not pursue any of the DHS Home Help Services because she felt her mother needed 24 hour care which she would not get with the home help services. ██████████ pointed out that the MI Choice waiver program also does not cover 24-hour care and is not set up to be a 24-hour care service.

A review of the Department's the *MI Choice Waiver Program Eligibility and Admission Process, January 2010 version*, and applying the policies therein to the Appellant finds that the Senior Resources properly placed the Appellant on the MI Choice program waiting list based upon the information available to them at the time they evaluated the Appellant by telephone according to the TIG.

The MI Choice agency and this Administrative Law Judge are bound by the MI Choice program policy and cannot order enrollment into a program that has not available slots. In addition, this Administrative Law Judge possesses no equitable jurisdiction to grant exceptions to Medicaid, Department and MI Choice program policy. The parties discussed the possibility of an imminent risk assessment in the future.

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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 denied immediate assessment of the Appellant and placed the Appellant on the waiting list.

**IT IS THEREFORE ORDERED** that:

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

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

cc:

[REDACTED]

Date Mailed: 9/7/11

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

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.