

**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. 2011-40737 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 ██████████.

██████████, Director of the ██████████ represented the Department of Community Health's MI Choice Waiver agency.

**ISSUE**

Did the Waiver agency properly place the Appellant on the MI Choice Waiver eligibility 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 the ██████████ 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 ██████ year-old woman who resides in her own home with her husband. She is seeking MI Choice Waiver services.
4. The Department's waiver agency is currently at capacity and, due to lack of funds, is unable to immediately enroll Appellant in the MI Choice Waiver program at this time.
5. The Waiver agency completed a telephone screening for the Appellant on or about ██████████.

6. The eligibility screening resulted in the determination that the Appellant is to be placed on the MI Choice waiting list for services and does not meet a priority category.
7. Following notification that she had been placed on a waiting list for the MI Choice program, the Appellant requested a formal, administrative hearing.

### **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 [REDACTED], 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)*

### **MI Choice Waiver waiting list procedure and priority categories**

*Policy Bulletin 09-47* issued by MDCH addresses wait list procedures and priority categories.

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](http://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.** (emphasis added by ALJ)

### **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,  
October 2009, pages 1-2 of 3.*

The Appellant did not challenge the legal basis for placement on the waiting list. The Appellant testified that she needs help due to her health conditions. She stated that she had help provided through another agency, however, was unsatisfied with the assistance provided and quality of provider. She has since hired another provider privately.

The waiver agency has established a waiting list due to the limited resources it has to provide services. The waiver agency's representative testified that the Appellant was placed on the waiting list chronologically and completed all required screening for priority determinations.

### **DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that the MI Choice Waiver agency properly denied the Appellant enrollment and placed her on the waiting list due to limited financial resources.

**IT IS THEREFORE ORDERED** that:

The Department's decision is UPHELD.

---

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

**Docket No. 2011-40737 EDW  
Decision and Order**

cc:



Date Mailed: 9/13/2011

**\*\*\* 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.