

**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. 2011-42013 EDW  
Case No. 1047666504

██████████  
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 son, appeared on behalf of ██████████, and ██████████, Appellant's daughter testified on the Appellant's behalf.

██████████, LBSW, Waiver Services Manager, represented the Department of Community Health's (Department) waiver agency, the Region ██████ Area Agency on Aging, and ██████████, LBSW, Supports Coordinator testified on behalf of the Department's waiver agency.

**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 Region ██████ Area Agency on Aging to provide MI Choice Waiver services to eligible beneficiaries.
2. Region ██████ Area Agency on Aging 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 woman, DOB ██████████, who suffers from advanced dementia, and is seeking MI Choice Waiver services.

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4. On [REDACTED], the waiver agency completed the Telephone Intake Guidelines screening. The waiver agency determined that the Appellant passed the Telephone Intake Guidelines screening and she was placed on the wait list. (Exhibit C).
5. On [REDACTED], [REDACTED], LBSW, Supports Coordinator for Region [REDACTED] Area Agency on Aging went to Highland an assisted living facility where Appellant was residing and conducted an assessment with the Appellant's daughter [REDACTED] present. (Exhibits A-C).
6. [REDACTED] determined that the Appellant was medically eligible as a Nursing Facility Level of Care Determination (NFLOCD) was completed which showed she met the criteria through Door 1; but, Appellant was not found to qualify for nursing facility diversion priority status as the result of scoring only a 6 on the Imminent Risk Assessment. (Exhibits A, B & D).
7. On [REDACTED], Region [REDACTED] Area Agency on Aging 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. 5).
8. On [REDACTED], the Department received a Request for Hearing from [REDACTED] the Appellant's daughter signed by [REDACTED] the Appellant's son/representative. (Exhibit 1).

**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 Region II Area Agency on Aging, 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

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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's witness ██████████ testified that on ██████████ she went to ██████████ where Appellant was residing and met with her and ██████████. ██████████ testified that she completed a NFLOCD and an Imminent Risk Assessment. The NFLOC Determination showed that Appellant was medically qualified, but the Appellant only scored a 6 on the Imminent Risk Assessment so she had to be kept on the waiting list. Persons with a total score of 8 or more may qualify for diversion. (Exhibit A, p. 4).

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 daughter ██████████ testified that she was present when ██████████ did the assessment for her mother. ██████████ testified that she did not see the assessment forms until she got them in the mail. ██████████ stated she has been a nurse since 1971 and has done medical assessments. ██████████ did not agree with two of the scores listed on the Imminent Risk Assessment, items 6 and 9. ██████████ felt that there should have been 1 point for each of these items, and that the total score should have been 8 instead of 6 as determined by ██████████. A score of 8 is significant as it may allow for diversion from the wait list.

Item 6 scores 1 point for a flare up of a recurrent or chronic health problem within the last three days. ██████████ indicated that due to her advanced dementia, her mother's memory was much worse than before and she also had macular degeneration. Item 9 scores 1 point if the person rarely or never made decisions within the past three days about organizing the day, e.g., when to get up or to have meals, what clothes to wear, what to do. ██████████ indicated that her mother needs to be prompted to go to eat, or to decide when to get dressed, or how to turn on the TV using the remote control. ██████████ further indicated that her mother puts on a good show for others and appears to be higher functioning. ██████████ argued that Appellant should be reassessed now and she believed Appellant would score an 8 on a new Imminent Risk Assessment.

A review of the *MI Choice Waiver Program Eligibility and Admission Process*, and applying these policies to the Appellant finds that the Region ██████████ Area Agency on Aging properly placed the Appellant on the MI Choice program waiting list. The information gathered by ██████████ at the time Appellant's imminent risk assessment was done supports the decision to place Appellant on the waiting list. The testimony of the Appellant's daughter does not support additional points for items 6 and 9, because the testimony does not show that there was a flare up of a recurrent or chronic health problem within the three days prior to the assessment, or that the Appellant's decision making issues were also occurring within the same time period.

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 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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William D. Bond  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 9/6/2011

**\*\*\* 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.