

**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. 2011-50099 EDW  
Case No. 1031364137

██████████,

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 telephone hearing was held on ██████████. ██████████ appeared and testified on behalf of ██████████. Appellant ██████████ was present, but being deaf was unable to participate in the hearing.

██████████, Special Projects Supervisor, appeared and testified on behalf of the Department of Community Health's (Department) waiver agency, the Area Agency on Aging ██████████.

**ISSUE**

Did the Department's MI Choice Waiver agency properly determine that Appellant did not meet the criteria for placement on the MI Choice Waiver program 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 Area Agency on Aging ██████████ to provide MI Choice Waiver services to eligible beneficiaries.
2. 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 man, (DOB ██████████), who suffers from a 90% hearing loss due to otosclerosis, bad balance, macular degeneration, placement of a stent, 2 hip replacements. Appellant is seeking MI Choice Waiver services. (Exhibit #2).

4. On ██████████, the waiver agency completed the Telephone Intake Guidelines screening. The waiver agency determined that Appellant did not pass the Telephone Intake Guidelines screening and could not be placed on the MI Choice Waiver program waiting list. Instead, the Area Agency on Aging ██████████ placed Appellant on a waiting list for OSA (Office of Services to the Aging) services. (Exhibit 1, and Attachment 1, pp. 4-5).
5. On ██████████011, Area Agency on Aging ██████████ sent Appellant an Adequate Action Notice advising him he did not qualify for the MI Choice Waiver program, but that he had been placed on the waiting list for the Community Care Management Program. Appellant was also advised of his Medicaid Fair Hearing rights. (Exhibit 1, Attachment 1, p. 2).
6. On ██████████, the Appellant and his representative signed a Request for Hearing and submitted it to the Area Agency on Aging ██████████. The hearing request received by the Michigan Administrative Hearing System on ██████████. (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 Area Agency on Aging 1-B, 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's witness ██████████ testified the Area Agency on Aging 1-B is the Waiver Agency for the CMH and contracts with them to provide MI

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Choice Waiver services. ██████████ stated on ██████████ Appellant's representative ██████████ contacted the Area Agency on Aging ██████████ for services. ██████████ an Intake Specialist with the Agency who is certified in informational assistance conducted a telephone screen using the MI Choice Waiver Telephone Intake Guidelines (TIG). (Exhibit 1, Attachment 1, pp. 4-5). According to the responses recorded by ██████████ Appellant did not pass the telephone screen and could not be placed on the MI Choice Waiver program wait list.

██████████ stated the Appellant was then placed on the wait list for the Elder American Acts programs that are available through the Area Agency on Aging ██████████. Appellant was also given several referrals, including a referral to DHS to determine if he was eligible for some Medicaid services and some other community services, which could assist with his deaf needs and financial resources that were needed.

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 she was the Appellant's companion. ██████████ testified she did not remember completing the TIG with ██████████. She said she believed if she were asked about oxygen therapy she would have said yes. ██████████ also said the Appellant had physical therapy for his back, arms, and legs.

██████████ listed all of Appellant's various medical conditions. Which include blood pressure problems, macular degeneration in both eyes, carpal tunnel syndrome, a torn rotator cuff, arthritis/wears a back brace, Type 2 Diabetes, needs new glasses, his hearing is almost nil as he hears through his bone structure, he has over growth of the middle ear, he sleeps with a C-Papp with oxygen, and has had two hips replaced.

██████████ also stated Appellant does have anger management due to frustration from not hearing. He also speaks extremely loud, and he is trying to train himself to lower his voice. ██████████ indicated the services they were being requested were for Appellant's hearing problem, she wasn't sure if there might not be some new hearing aid device available for the Appellant.

A review of the *MI Choice Waiver Program Eligibility and Admission Process*, and applying these policies to the Appellant finds that the Area Agency on Aging ██████████ properly denied Appellant placement on the MI Choice program waiting list. The information gathered at the time of the telephone screening shows that Appellant did not meet the eligibility criteria to be assessed for the MI Choice Waiver Program.

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 policy clearly states that the MI Choice Waiver Program agent shall complete the TIG to the extent possible using information known to the caller. However, there is nothing that would prevent the Appellant from being screened again if there was a change in circumstances, or if new or additional information exists that was not provided

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at the time of the screening done in [REDACTED].

The MI Choice Waiver agency provided sufficient evidence that it followed the MI Choice telephone screening 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 the Appellant placement on the MI Choice Waiver 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:

[REDACTED]

Date Mailed: 10/03/2011

**\*\*\* 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.