

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-50101 EDW
Case No. 1055796138

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's daughter, appeared on Appellant's behalf. ██████████, Intake Specialist, represented the Department of Community Health's Waiver Agency, The ██████████ ("Waiver Agency" or ██████████).

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 him 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. Appellant is a ██████ year-old man who has been diagnosed with dementia and high blood pressure. (Exhibit 1, page 2).
4. Appellant's representative/daughter has power of attorney over his affairs. (Exhibit 2, pages 3-5).

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5. On [REDACTED], Appellant's representative requested MI Choice Waiver services on his behalf. (Testimony of Appellant's representative; Exhibit 1, page 2).
6. An Intake Specialist from [REDACTED] then conducted a telephone screen with Appellant's representative. (Exhibit 1, pages 2-9).
7. No imminent risk assessment was completed during that telephone screen because Appellant's representative stated that Appellant was not at risk of going into a nursing home at that time. (Testimony of Appellant's representative; Exhibit 1, page 3).
8. On [REDACTED], [REDACTED] notified Appellant in writing that the MI Choice Waiver program was at program capacity and he could not be evaluated for enrollment at that time. (Exhibit 1, page 10). Appellant was, however, placed on the Waiver Enrollment Waiting List. (Testimony of [REDACTED]).
9. On [REDACTED], the Department received a Request for Hearing from the Appellant. (Exhibit 2, pages 1-5).

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. 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.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. 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 [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 C.F.R. § 430.25(b))

The MI Choice representative testified that the MI Choice Waiver program is at capacity for MI Choice Waiver enrollees. The MI Choice representative explained that it 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 MI Choice representative also testified that, based on Appellant's representative's own statements during the telephone intake, it appeared that Appellant did not meet any exception from the chronological waiting list and, therefore, he was placed on the chronological waiting list.

The Medical Services Administration Policy Bulletin 05-21 (April 1, 2005) (hereinafter "MSA 05-21") 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.

(MSA 05-21, pages 1-2 of 5 (emphasis added))

Moreover, with regard to priority categories, the pertinent section of Medical Services Administration Policy Bulletin 09-56 (November 10, 2009) (hereinafter “MSA 09-56”), states:

Nursing Facility Transition Participants

Nursing facility residents who desire to transition to the community, are medically 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 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.

(MSA 09-56, page 2 of 3)

Appellant’s representative testified that her father requires significant amount of care, but no one disputes his medical issues and he was not placed on the waiting list for that reason. Instead, the MI Choice representative testified that the waiver agency is at capacity for MI Choice Waiver enrollees. It 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. Moreover, Appellant’s representative did not request an exception to that waiting list be made and, based on her other statements and a review of Policy Bulletin 09-47, ██████████ properly determined the Appellant did not meet any exception from the chronological waiting list.

The Waiver 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.

The MI Choice Waiver Agency provided sufficient evidence that it implemented the MI Choice waiting list procedure in the approved manner 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 Appellant and placed Appellant on the waiting list.

IT IS THEREFORE ORDERED that:

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

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 10/3/2011

***** 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.