

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
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. 2011-11463 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 on ██████████. ██████████ appeared on her own behalf. ██████████ appeared and gave testimony on behalf of the Appellant.

██████████ represented the Department's waiver agency, ██████████.

**ISSUE**

Did the Department's MI Choice Waiver agent properly determine that it could not assess the Appellant for the MI Choice Waiver program, and instead 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 ██████████ 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. The Appellant is ██████████ who lives in her own home with her ██████████.
4. The Appellant made a request for MI Choice Waiver services on

██████████. ██████████ conducted a telephone screen for Appellant. (Exhibit 1, page 4).

5. During the telephone screen the Appellant stated that her ██████████ holds control of their finances and she “is lucky if she gets water and a meal every day.” (Exhibit 1, page 13).
6. Based on the Appellant’s statement that her ██████████ withholds food and needed services from her ██████████ made a referral to the Department of Human Services Adult Protective Services Program. (Exhibit 1, page 10).
7. On ██████████ ██████████ notified the Appellant in writing that the MI Choice Waiver program was at program capacity and informed Appellant that she had been placed on the Waiver Waiting List. (Exhibit 1, page 11).
8. On ██████████ the State Office of Administrative Hearings and Rules received a request for hearing from the Appellant. (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 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)*

### Placement on Waiting List

The MI Choice representative for ██████████ testified that the waiver programs are at capacity for MI Choice Waiver enrollees. The MI Choice representative from ██████████ explained that because it believed there was an open adult protective services case it appeared the Appellant met an exception from the chronological waiting list, and therefore placed her on the waiting list for both the priority category and the chronological category.

Clarification of the adult protective services priority category is found in *Policy Bulletin 09-56*:

#### **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 09-56,  
November 2009, pages 1-2 of 3.*

The Appellant testified at first that she did not have an open adult protective services case. ██████████ representative explained that it made the referral to adult protective services because the Appellant stated her ██████████ controlled the finances and refused to provide her basic necessities such as food. The Appellant testified in response that she did make those statements but her ██████████ had a lot of stress that day and she was very upset with him. The Appellant's witness said that despite the Appellant testifying that she did not have an open protective services case, the Appellant wanted to stay on the priority category waiting list.

To the Appellant's inconsistent statements about the adult protective services the MI Choice representative explained ██████████ would keep the Appellant on both waiting lists, in accordance with the priority category listed in *Policy Bulletin 09-56*. The MI Choice representative explained that when the Appellant's turn on the priority

waiting list arrived it would assess whether the Appellant had an adult protective services case, and if so she would receive an assessment. A review of *Policy Bulletin 09-56* and application to Appellant finds that the MI Choice agency properly placed Appellant on the priority category and on the chronological category waiting lists.

**Summary**

The MI Choice agency 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 evidence of record demonstrated the MI Choice Waiver agency's placement of Appellant on the MI Choice waiting lists was 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 agencies properly placed the Appellant on its waiting lists.

**IT IS THEREFORE ORDERED** that:

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

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Lisa K. Gigliotti  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 2/1/2011

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

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.