



Services.

5. On or before ██████████, an Intake Specialist from ██████████ conducted a telephone screen with the Appellant. (Exhibit 3).
6. The ██████████ has a MI Choice waiver waiting list.
7. The ██████████ forwarded Appellant's information so that an Imminent Risk of Nursing Facility Placement Assessment was performed. The Imminent Risk assessment result was that the Appellant was not at imminent risk of nursing facility placement. (Exhibit 3).
8. On ██████████, ██████████ 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 2).
9. On ██████████, the Department received a request for hearing from the Appellant. In the request for hearing the Appellant sought to contest her Department of Human Services spend down amount, not the MI Choice waiting list. (Exhibit 4).

### **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 the ██████████, 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 testified that the MI Choice Waiver program was at capacity for MI Choice Waiver enrollees. The MI Choice representative said that after the telephone intake it forwarded the Appellant's information so that an Imminent Risk of Nursing Facility Placement Assessment could be performed.

The pertinent section of *Policy Bulletin 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.

*Medical Services Administration Policy Bulletin 09-56,  
November 2009, pages 1-2 of 3.*

The MI Choice representative testified that the Appellant was not at an imminent risk for nursing facility placement and therefore was placed on the MI Choice Waiver waiting list. The MI Choice representative explained that the waiver program 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.

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The Appellant explained that she requested a hearing to contest her Department of Human Services spend down amount, not the MI Choice waiting list. (Exhibit 4). It was discussed with the Appellant that because she had requested a hearing for her Medicaid spent down amount on a Department of Community Health form, the request was forwarded to the wrong Department. The Appellant indicated she would file a new request for hearing to contest her Medicaid spent down amount and would utilize a Department of Human Services form, but was concerned about the 90-day appeal time limit. It was explained to the Appellant that because she requested a hearing on her Medicaid spent down within 90 days, her appeal time period should be adequate.

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 was unable to assess Appellant and instead placed the Appellant on the waiting list.

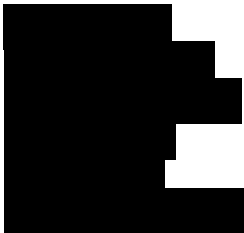
**IT IS THEREFORE ORDERED** that:

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:

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Date Mailed: 2/28/2011

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**\*\*\* 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.