

**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. 2011-18587 EDW

██████████,

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. ██████████, son and Conservator, appeared on the Appellant's behalf. ██████████, son, appeared as a witness for the Appellant. ██████████, Community Access Manager for ██████████ ██████████ represented the Department's waiver agency. ██████████, Quality Manager, appeared as a witness for the ██████████.

ISSUE

Did the Waiver Agency properly presume the Appellant would not qualify for participation in the MI Choice Waiver program?

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 Appellant is an ██████ year old applicant for MI Choice Waiver Services. (Exhibit C)
2. The Appellant was screened for participation in the MI Choice Waiver program on ██████████. (Exhibit C)
3. During the telephone intake screening, it was reported that the Appellant has monthly income from Social Security ██████████ and a pension (██████████) totaling ██████████ (Exhibit C)

4. Based on the information provided to answer the Telephone Intake Guidelines screening tool, the waiver agency determined that the Appellant was probably ineligible for the MI Choice Waiver program due to income in excess of the \$2,022 limit for the MI Choice Waiver program. (Exhibits A and C; Community Access Manager Testimony)
5. On ██████████, the waiver agency issued an Adequate Action Notice to the Appellant indicating it was presumed that she would not financially qualify for the MI Choice Waiver program based on the Telephone Intake Guidelines. (Exhibit D)
6. On ██████████ a hearing request was filed on the Appellant's behalf, but lacking Appellant's signature or documentation indicating there was a legal guardian. The hearing request was re-submitted on ██████████, with the Guardian's signature. On ██████████, the hearing request was re-submitted with a copy of the Letters of Guardianship.

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 eligibility for 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 Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case the Detroit 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 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)*

1915(c) (42 USC 1396n (c) allows home and community based services to be classified

Docket No. 2011-18587 EDW
Decision and Order

as “medical assistance” under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b))

Home and community based services means services not otherwise furnished under the State’s Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. (42 CFR 440.180(a)).

The MI Choice Waiver Program Eligibility and Admission Process policy address the Telephone Intake Guidelines:

The Telephone Intake Guidelines (TIG) is a list of questions that identify **potential** MI Choice Waiver Program participants for further assessment. The TIG does not determine program eligibility. Use of the TIG is mandatory for MI Choice Waiver Program agencies prior to placing individuals on the MI Choice Waiver Program waiting lists.

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.

██████████
Docket No. 2011-18587 EDW
Decision and Order

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.

(MI Choice Waiver Program Eligibility and Admission Process, January 2010, Page 4 of 7)

The eligibility requirements for the MI Choice Waiver program can be found in the Bridges Eligibility Manual (BEM), including the requirement that income must be at or below 300% of the SSI Federal Benefit Rate. (Bridges Eligibility Manual (BEM), 106, MA Waiver for Elderly and Disabled, 10/1/2010, Page 3 of 6) In 2010, this was an income limit of \$2,022.

In the present case, a telephone intake screening was completed on ██████████. While only a copy of the wait list pre-screening questionnaire was included, the Community Access Manager testified that the wavier agency did utilize the Telephone Intake Guidelines (TIG). During the telephone intake screening it was reported that the Appellant has monthly income from Social Security ██████████ and a pension ██████████ totaling ██████████ (Exhibit C) There was no indication that the Appellant's income would decrease and she would become financially eligible within 60 days. Accordingly, the Waiver Agency properly issued an Adequate Action Notice to the Appellant on ██████████, indicating that the Appellant was presumptively financially ineligible based on the Telephone Intake Guidelines.

The Appellant's son and conservator testified that the Appellant's condition has changed and there is a need for a second caregiver. The Appellant's sister has not been able to do as much since she injured her arm. An evening caregiver is needed in addition to the care provided by other family members. The Appellant's son and conservator confirmed that the income information provided on ██████████, was accurate. He explained that all of the Appellant's money is used to pay her caregivers and for her medical needs. (Son/Conservator Testimony)

While the Appellant's son/conservator's testimony was credible, this ALJ does not have any authority to override the program eligibility requirements. The Appellant's monthly income of ██████████ exceeded the program limit of \$2,022. Based on the uncontested evidence, the Waiver Agency properly determined that the Appellant was probably ineligible for MI Choice Waiver services based on the Telephone Intake Guidelines screening due to her income. The Waiver Agency's determination must be upheld.

DECISION AND ORDER

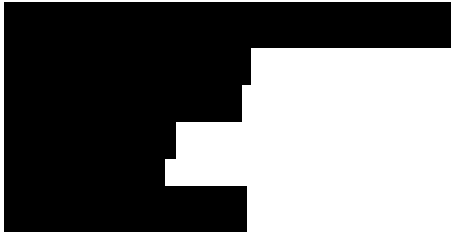
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Waiver Agency properly presumed the Appellant would not financially qualify for participation in the MI Choice Waiver program based on the Telephone Intake Guidelines.

IT IS THEREFORE ORDERED that:

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

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 7/14/2011

***** 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.