

5. The waiver agency notified the Appellant she had been placed on the MI Choice waiting list [REDACTED].
6. The Department's waiver agency is currently at capacity and, due to lack of funds, is unable to enroll Appellant in the MI Choice Waiver program at this time despite appearing to meet the necessary qualifications.
7. Following notification she had been placed on a waiting list for the MI Choice program, the Appellant requested a formal, administrative hearing.

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 [REDACTED] functions 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)*

MI Choice Waiver waiting list procedure and priority categories

The MI Choice representative testified that [REDACTED] waiver program is at capacity for MI Choice Waiver enrollees. The MI Choice representative said that from the telephone intake it appeared the Appellant did not meet any exception from the chronological waiting list and therefore was placed on the waiting list.

The pertinent section of *Policy Bulletin 09-47*:

The following delineates the current waiting list priority categories and their associated definitions. They are listed in descending order of priority.

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 A given number of program slots will be targeted by MDCH each year to accommodate nursing facility transfers. Nursing facility residents are a priority only until the enrollment target established by MDCH has been reached.

Current Adult Protective Services (APS) Clients When an applicant who has an active APS case requests services, priority should be given when critical needs can be addressed by MI Choice Program services. It is not expected that MI Choice Program agents seek out and elicit APS cases, but make them a priority when appropriate.

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.

Updates

Below are the two waiting list priority categories that have been updated. The updated categories will also be available on the MDCH website at www.michigan.gov/medicaid providers >> Prior Authorization >> The Medicaid Nursing Facility Level of Care Determination >> MI Choice Eligibility and Admission Process.

Nursing Facility Transition Participants

Nursing facility residents who face barriers that exceed the capacity of the nursing facility routine discharge planning process qualify for this priority status. Qualified persons who desire to transition to the community 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.

*Medical Services Administration Policy Bulletin 09-47,
October 2009, pages 1-2 of 3.*

The waiver agency has committed all the financial resources made available through the Department's appropriations and to ensure continued service to current waiver enrollees and is not assessing any additional individuals. It maintains a waiting list and contacts individuals on the list on a first come, first served basis when sufficient resources become available to serve additional individuals. The agency did conduct an imminent risk assessment to see if the Appellant qualified for diversion status, which would effectively advance her position on the waiting list. The Appellant did score 7. She requires a score of 8 on this assessment to qualify for diversion status, thus, the agency had to place the Appellant on the list without special priority.

The Appellant's ██████████ stated at hearing the Appellant had a worsening medical condition since the screening which should result in increased priority. She stated the Appellant is now receiving 24 hour per day oxygen therapy, following a hospital stay and diagnosis of COPD. She stated she is receiving 2 breathing treatments per day, sometimes requiring more. She stated she has memory problems and requires reminders for medications and she is making bad nutrition decisions.

The Agency representative was asked if the new diagnosis or use of oxygen therapy would alter the outcome of the imminent risk screening. She stated it did not.

The Agency representative suggested alternate care plans be established during the waiting period, such as requesting an increase in Home Help Services provided through the

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Department of Human Services. The Appellant's representative testified she had requested an increase in services and had been verbally informed she could not have an increase because she was receiving the maximum level of supports available in that program. She was informed she had a right to request a hearing about that denial.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find the MI Choice Waiver agency properly denied Appellant enrollment and placed her on the waiting list due to limited financial resources.

IT IS THEREFORE ORDERED that:

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

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 4/15/2011

***** 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.