

**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. 2012-33425 EDW

██████████  
Appellant.  
\_\_\_\_\_ /

**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 Senior ██████████

**ISSUE**

Did the Department's MI Choice Waiver Agency properly determine that Appellant did not qualify for a priority level on the Agency's wait list for services?

**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, among other conditions, hypertension and memory loss. (Exhibit 2, page 4). Appellant's daughter also reports that he suffers from dementia. (Exhibit 2, page 2).
4. On ██████████, Appellant's representative requested MI Choice Waiver

services on his behalf. A telephone intake was performed and Appellant was notified that, while he appeared to qualify for the program, the MI Choice Waiver program was at program capacity and he could not be evaluated for enrollment at that time. Appellant was, however, placed on the Waiver Enrollment Waiting List at that time. (Testimony of ██████████).

5. Appellant, through his representative, appealed that decision and a hearing was held before this Administrative Law Judge on ██████████.
6. This Administrative Law Judge ultimately affirmed the Waiver Agency's decision, but during the hearing, the Waiver Agency's representative also agreed to perform an imminent risk assessment on Appellant. ██████████
7. On ██████████, ██████████ from the Waiver Agency performed an imminent risk assessment. Appellant's representative was also present during the assessment. (Testimony of Appellant's representative; Exhibit 1, pages 3-4).
8. ██████████ subsequently determined that Appellant did not qualify for a higher priority level on the waiting list. (██████████). On ██████████, it informed Appellant and Appellant's representative in writing of that decision. (Exhibit 1, pages 5-6).
9. On ██████████, the Department received a Request for Hearing from the Appellant. (Exhibit 2, pages 1-4).

### **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. 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 Senior Alliance, 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))

Here, Appellant's representative testified that her father requires significant amount of care, but no one disputes his medical issues and he was placed on the waiting list for the waiver program. The question in this case is whether Appellant should be placed higher on the waiting list on the basis that he is at imminent risk of being placed in a nursing facility.

With respect to priority categories, the pertinent section of the attachment to Medical Services Administration Policy Bulletin 11-27 (July 1, 2011) (hereinafter "MSA 11-27"), states:

### **3.4.A. PRIORITY CATEGORIES**

Applicants will be placed on a waiting list by priority category and then chronologically by date of request of services. Enrollment in MI Choice is assigned on a first come/first served basis using the following categories, listed in order of priority given:

#### **3.4.A.1. CHILDREN'S SPECIAL HEALTH CARE SERVICES (CSHCS) AGE EXPIRATIONS**

This category includes only those persons who continue to require Private Duty Nursing services at the time such coverage ends due to age restrictions under CSHCS.

#### **3.4.A.2. NURSING FACILITY TRANSITION PARTICIPANTS**

Nursing facility residents who desire to transition to the community and will otherwise meet enrollment requirements for MI Choice qualify for this priority status and are eligible to receive assistance with supports coordination, transition activities, and transition costs. Priority status is not given to applicants whose service and support needs can be fully met by existing State Plan services.

### **3.4.A.3. CURRENT ADULT PROTECTIVE SERVICES (APS) AND DIVERSION APPLICANTS**

An applicant with an active Adult Protective Services (APS) case is given priority when critical needs can be addressed by MI Choice services. It is not expected that MI Choice waiver agencies solicit APS cases, but priority is given when necessary.

An applicant is eligible for diversion priority 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 (IRA), an evaluation developed by MDCH. Use of the IRA is essential in providing an objective differentiation between those applicants at risk of a nursing facility placement and those at imminent risk of such a placement. Only applicants found to meet the standard of imminent risk are given priority status on the waiting list. Applicants may request that a subsequent IRA be performed upon a change of condition or circumstance.

Supports coordinators must administer the IRA in person. The design of the tool makes telephone contact insufficient to make a valid determination. Waiver agencies must submit a request for diversion status for an applicant to MDCH. A final approval of a diversion request is made by MDCH.

### **3.4.A.4. CHRONOLOGICAL ORDER BY SERVICE REQUEST DATE**

This category includes applicants who do not meet any of the above priority categories or for whom prioritizing information is not known. As stated, participants will be placed on the waiting list in the chronological order that they requested services as documented by the date of TIG completion or initial nursing facility interview.

(Attachment to MSA 11-27, page 8)

An imminent risk assessment was performed in this case and it was determined that Appellant did not meet the criteria for a higher priority level. Appellant's representative was present during that assessment and, while she now disputes its conclusion, the Waiver Agency's decision must be affirmed given the information it had at the time it made its decision.

In support of her argument, Appellant's representative testified that the responses to questions 3, 5, 7 and 12 of the imminent risk assessment are incorrect. However, she also testified that some of those answers are incorrect in light of events that occurred since the imminent risk assessment was performed. Appellant's representative further testified that she does not recall her answers to some of the disputed questions and that she answered incorrectly at the time with respect to question 12 because she did not want to embarrass her father.

The Waiver Agency is entitled to rely on the information it is given when making its decision. To the extent Appellant now disputes that information based on new developments or corrections, his argument must be rejected as this Administrative Law Judge's review is limited to the information the Waiver Agency had at the time. Additionally, to the extent that Appellant's representative testified that the answers she gave at the time are not reflected in the imminent risk assessment, her testimony is not given much weight as she also testified that she does not remember what she said and that she did not know the answers to some questions.

This Administrative Law Judge would note that the Waiver Agency's representative agreed that, in light of the new information submitted by Appellant's representative, another imminent risk assessment should be performed. The parties also agreed to set up such an assessment after the hearing in this case. However, with respect to the decision before this court, the Waiver Agency's actions were proper given the information it had at the time.

**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 determined that Appellant did not qualify for a priority level on the Agency's wait list for services.

**IT IS THEREFORE ORDERED** that:

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

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

**Docket No. 2012-33425 EDW**  
**Decision and Order**

CC:



Date Mailed: \_\_\_3-29-12\_\_\_\_\_

**\*\*\* 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.