

**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. 2012-44257 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 telephone hearing was held on ██████████. Appellant ██████████ appeared and testified in her own behalf.

██████████ Special Projects Manager, appeared and testified on behalf of the Department of Community Health's (Department) waiver agency, the Area Agency on Aging 1-B.

ISSUE

Did the Department's MI Choice Waiver agency properly determine that Appellant did not meet the criteria for placement on the MI Choice Waiver program 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 Area Agency on Aging 1-B to provide MI Choice Waiver services to eligible beneficiaries.
2. Area Agency on Aging 1-B 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 a ██████ year-old woman, (██████████) who is a cancer survivor and reports she is disabled and has difficulty with mobility. Appellant is seeking MI Choice Waiver services. (Exhibit 3 and testimony).

4. On ██████████, the waiver agency completed the Telephone Intake Guidelines screening. The waiver agency determined that Appellant did not pass the Telephone Intake Guidelines screening and could not be placed on the MI Choice Waiver program waiting list. Instead, the Area Agency on Aging 1-B offered to refer Appellant for alternative services that she might qualify for, but the Appellant declined. (Exhibits 1-2 and testimony).
5. On ██████████, Area Agency on Aging 1-B sent Appellant an Adequate Action Notice advising her that she did not qualify for the MI Choice Waiver program. Appellant was advised of her Medicaid Fair Hearing rights. (Exhibit 1 and testimony).
6. On ██████████, Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. (Exhibit 3).

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 Area Agency on Aging 1-B, 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 waiver agency's witness ██████████ testified the Area Agency on Aging 1-B (AAA 1-B) is the Waiver Agency for the CMH and contracts with them to provide MI Choice Waiver services. ██████████ stated on ██████████ Appellant contacted the AAA 1-B for services. ██████████ an Intake Specialist with the Agency conducted a

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telephone screen using the MI Choice Waiver Telephone Intake Guidelines (TIG). (Exhibit 2). According to the responses recorded by ██████████ Appellant did not pass the telephone screen and could not be placed on the MI Choice Waiver program wait list. ██████████ stated an Adequate Action Notice was then sent out to the Appellant notifying her in writing that she did not pass the telephone screen for the MI Choice Waiver program. ██████████ stated the Appellant was then offered referrals to community resources and other services with alternative funding sources, but the Appellant declined.

The *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2012, pp. 5-6, outlines the approved evaluation policy for the MI Choice Waiver program:

3.2 TELEPHONE INTAKE GUIDELINES

The Telephone Intake Guidelines (TIG) is a list of questions designed to screen applicants for eligibility and further assessment. Additional probative questions are permissible when needed to clarify eligibility. The TIG does not, in itself, establish program eligibility. Use of the TIG is mandatory for MI Choice waiver agencies prior to placing applicants on a MI Choice waiting list when the agency is operating at its capacity. The date of the TIG contact establishes the chronological placement of the applicant on the waiting list. The TIG may be found on the MDCH website. (Refer to the Directory Appendix for website information.)

Applicants who request services in MI Choice must be screened by telephone using the TIG at the time of their request. If the caller is seeking services for another individual, the waiver agency shall either contact the applicant for whom services are being requested or complete the TIG to the extent possible using information known to the caller. For applicants who are deaf, hearing impaired, or otherwise unable to participate in a telephone interview, it is acceptable to use an interpreter, a third-party in the interview, or assistive technology to facilitate the exchange of information.

As a rule, nursing facility residents who are seeking to transition into MI Choice are not contacted by telephone but rather are interviewed in the nursing facility. For the purposes of establishing a point of reference for the waiting list, the date of the initial nursing facility visit shall be considered the same as conducting a TIG, so long as the functional and financial objectives of a TIG are met. (Refer to the Waiting Lists subsection for additional information.) Specifically, the interview must establish a reasonable expectation that the applicant will meet the functional and financial eligibility requirements of the MI Choice program within the next 60 days.

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Applicants who are expected to be ineligible based on TIG information may request a face-to-face evaluation using the Michigan Medicaid Nursing Facility Level of Care Determination and financial eligibility criteria. Such evaluations should be conducted as soon as possible, but must be done within 10 business days of the date the TIG was administered. MI Choice waiver agencies must issue an adverse action notice advising applicants of any and all appeal rights when the applicant appears ineligible either through the TIG or a face-to-face evaluation.

When an applicant appears to be functionally eligible based on the TIG, but is not expected to meet the financial eligibility requirements, the MI Choice waiver agency must place the applicant on the agency's waiting list if it is anticipated that the applicant will become financially eligible within 60 days. Individuals may be placed on the waiting lists of multiple waiver agencies.

The TIG is the only recognized tool accepted for telephonic screening of MI Choice applicants.

The Appellant testified she vaguely remembers answering the questions for the telephone screen. Appellant stated she appealed because she still needs help. Appellant stated she knows she was told that she wasn't eligible for the MI Choice Waiver program, and some of the other programs that were mentioned to her. She stated however that she still needs some help. ██████████ then suggested that the Appellant should call AAA 1-B's call center again and they should be able to assist her in finding alternative programs available to her under alternative funding sources.

A review of the *Medicaid Provider Manual, MI Choice Waiver, Telephone Intake Guidelines*, and applying these policies to the Appellant finds that the Area Agency on Aging 1-B properly denied Appellant placement on the MI Choice program waiting list. The information gathered at the time of the telephone screening shows that Appellant did not meet the eligibility criteria to be assessed for the MI Choice Waiver Program.

The MI Choice agencies 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 policy clearly states that the MI Choice Waiver Program agent shall complete the TIG to determine potential eligibility. If the individual does not pass the telephone screen, they cannot be assessed for the waiver program or placed on the waiting list.

The MI Choice Waiver agency provided sufficient evidence that it followed the MI Choice telephone screening 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 denied the Appellant placement on the MI Choice Waiver waiting list.

IT IS THEREFORE ORDERED that:

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

William D Bond

William D. Bond
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 5-24-12

***** 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.