

**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. 2012-53281 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 hearing was held on ██████████ ██████████ Appellant's ██████████ appeared and testified on Appellant's behalf.

██████████ represented the Department's ██████████ ██████████ ██████████, Region 14 Area Agency on Aging (Region 14 AAA or Waiver Agency), and testified on the Waiver Agency's behalf.

ISSUE

Did the Department's Michigan Waiver agent properly determine that it could not assess the Appellant for the Michigan Waiver program and place him on a 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 Region 14 AAA to provide Michigan Waiver services to eligible beneficiaries. (Testimony)
2. Region 14 AAA must implement the Michigan Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is an ██████████ whose date of birth is ██████████ ██████████ Appellant's diagnoses include Parkinson's Disease, Dementia, and Lung Cancer. (Exhibit 2, Testimony)

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4. The Appellant lives with his [REDACTED] in a single family home. Appellant's [REDACTED] is Appellant's primary care giver. Appellant's [REDACTED] and [REDACTED] also visit twice per week to provide assistance and give Appellant's spouse a break. Appellant's [REDACTED] [REDACTED] also provides informal supports. (Testimony)
5. On [REDACTED] Appellant's [REDACTED] contacted the Waiver Agency to inquire about services for Appellant. An Options Counselor called Appellant's home and spoke to Appellant's [REDACTED], but could tell that [REDACTED] was uncomfortable giving out information over the phone, so she set up an in-person interview. On [REDACTED] the [REDACTED] conducted an in-person interview with Appellant and his [REDACTED] at their home. Appellant met the criteria for services, but because the program was at capacity, Appellant was placed on the Waiver Enrollment Waiting List. (Exhibit 1, Testimony)
6. On [REDACTED] Region 14 AAA notified the Appellant that the MI Choice Waiver program was at program capacity, but that he had been placed on the Waiver Enrollment Waiting List. (Exhibit 1, Testimony).
7. On [REDACTED] the [REDACTED] received a request for hearing from the Appellant. (Exhibit 2).

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 Region 14 AAA, 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

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subpart B of part 431, subpart A of part 440 and subpart G of part 441 of this chapter. 42 CFR 430.25(b)

Katie Corbett, Waiver Director, at Region 14 AAA, testified that the MI Choice Waiver program is at capacity for MI Choice Waiver enrollees. ██████████ said that from the intake interview Appellant met the criteria for services but that Appellant was placed on the waiting list because the program was at capacity. ██████████ testified that the Options Counselor who conducted the interview with Appellant determined that Appellant was not at imminent risk for nursing home placement, so an imminent risk assessment was not completed. ██████████ also indicated that if there was a significant change in either Appellant's condition, or in Appellant's ██████████ ability to care for Appellant, they could contact the Waiver Agency for an imminent risk assessment.

The MI Choice representative stated that the waiver agency used current Medicaid policy, *Policy Bulletin 09-47*, when determining whether the Appellant screened eligible and placed on the chronological waiting list. The pertinent section of *Policy Bulletin 09-47* states:

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/medicaidproviders

- >> 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,
November 2009, pages 1-2 of 3.*

The Appellant's [REDACTED] testified that Appellant moves very slowly, that he has dementia and is very forgetful, and that he has Parkinson's disease. [REDACTED] testified that Appellant has been receiving Meals To Go, which has been very helpful, but that it would be helpful to have some support in the home so that Appellant's [REDACTED] could get a break. [REDACTED] indicated that Appellant cannot do things on his own. [REDACTED] also indicated that Appellant is diagnosed with lung cancer, but is not receiving treatment at this time.

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The MI Choice representative testified that the waiver agency is at capacity for MI Choice Waiver enrollees. It 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.

A review of *Policy Bulletin 09-47* and application to Appellant finds that the Region 14 AAA properly determined that the Appellant scored high enough on the imminent risk assessment to be placed at the top of the waiting list.

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.

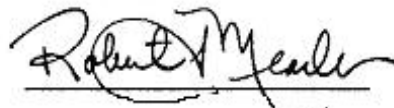
The MI Choice Waiver agency provided sufficient evidence that it implemented the MI Choice waiting list procedure in accordance with Department policy; therefore, its actions were proper.

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 assessment of the Appellant and placed the Appellant on the waiting list.

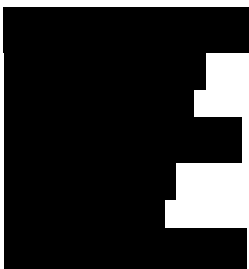
IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: _____

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***** 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.