

**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) 373-4147

**IN THE MATTER OF:**

Docket No. 2013-22335 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 provided testimony on Appellant's behalf.

██████████, Contract Manager, represented the Department's waiver agency, the Region 2 Area Agency on Aging (Region 2 AAA or Waiver Agency). ██████████, Quality Improvement Manager appeared for the Region 2 AAA, but did not testify.

**ISSUE**

Did the Department's MI Choice Waiver Agency properly place Appellant 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 2 AAA to provide MI Choice Waiver services to eligible beneficiaries.
2. Region 2 AAA must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a ██████ year-old woman, whose date of birth is ██████████. Appellant suffered a stroke in ██████████. Appellant has difficulty with balance and short term memory. Appellant needs attending to 24 hours per day. Appellant is diabetic and incontinent. (Exhibit A, p 9; Exhibit 1; Testimony).

██████████  
**Docket No. 2013-22335 EDW**  
**Hearing Decision & Order**

4. The Appellant's lives with her ██████████ who provides the majority of her care. Appellant receives respite services through the ██████████ Department on ██████████ and ██████████. (Exhibit A, p 1; Testimony).
5. On ██████████, an Intake Specialist from Region 2 AAA conducted a telephone screen with the Appellant's ██████████ (Exhibit A, pp 8-10). Appellant met the criteria for services, but because the program was at capacity, Appellant was placed on the Waiver Enrollment Waiting List. (Exhibit A, p 11).
6. On ██████████, Region 2 AAA notified the Appellant in writing that the MI Choice Waiver program was at capacity and that she had been placed on the Waiver Enrollment Waiting List. (Exhibit A, p 11)
7. Appellant's Request for Hearing was received by the Michigan Administrative Hearing System on January 15, 2013. (Exhibit 1).

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

**Docket No. 2013-22335 EDW**  
**Hearing Decision & Order**

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](http://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, ██████████, pages 1-2 of 3.*

The Waiver Agency's witness testified that the MI Choice Waiver program is at capacity for MI Choice Waiver enrollees. The Waiver Agency's witness said that from the telephone intake it appeared the Appellant met the criteria for services but that Appellant was placed on the waiting list because the program was at capacity.

Appellant's ██████████ questioned why the ██████████ Department on Aging did not inform him about MI Choice Waiver program two years ago when his wife had her stroke. Appellant's ██████████ indicated that if they had done so, Appellant would not be eligible for services given that the waiting list is approximately 18 months long. Appellant's ██████████ indicated that he does receive respite services through ██████████ Department on Aging, but that the respite worker is in her late ██████████'s and cannot handle Appellant on her own. Appellant's ██████████ testified that he can only leave the respite worker alone with his ██████████ for short periods of time. Appellant's ██████████ also indicated that he is not receiving homemaking services through ██████████, as it indicated in the Waiver Agency's Hearing Summary.

**Docket No. 2013-22335 EDW**  
**Hearing Decision & Order**

The Waiver Agency representative informed Appellant's [REDACTED] that Region 2 AAA is not the [REDACTED] Department on Aging. The Waiver Agency representative also indicated that if Appellant became Medicaid eligible in the future, that might make it easier for her to get additional services.

The Waiver Agency representative testified that Region 2 AAA 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. The MI Choice representative did indicate that should Appellant's medical situation and condition change, she could be reassessed.

The Waiver Agency 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**.

/s/ \_\_\_\_\_  
Robert J. Meade  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

**Docket No. 2013-22335 EDW**  
**Hearing Decision & Order**

cc:



Date Mailed: February 28, 2013

**\*\*\* 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.