

**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:**

████████████████████

**Appellant**

\_\_\_\_\_ /

**Docket No. 2013-33991 EDW  
Case No.**

**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 mother, appeared and testified on Appellant's behalf. Appellant also appeared and provided testimony.

██████████, Nursing Supervisor, represented the Department's waiver agency, ██████████, ██████████, ██████████ (██████████ or Waiver Agency), and testified on the Waiver Agency's behalf.

**ISSUE**

Did the Department's MI Choice Waiver agent properly determine that it could not assess the Appellant for the MI Choice 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 ██████████ to provide MI Choice Waiver services to eligible beneficiaries. (Testimony)
2. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. Appellant is a ██████ year-old female, born ██████████, who is diagnosed with dementia. (Testimony)

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4. Appellant lives with her husband, who is on disability, and her mother, who provides support. (Exhibit 1; Testimony)
5. On [REDACTED], Appellant was referred to the MI Choice Waiver Program and a telephone screening was conducted. Appellant met the criteria for services, but because the program was at capacity, Appellant was placed on the Waiver Enrollment Waiting List. (Exhibit A; Testimony)
6. The Waiver Agency did not conduct an Imminent Risk Assessment because Appellant had not yet applied for Medicaid. (Exhibit A; Testimony)
7. On [REDACTED], [REDACTED] 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 A; Testimony).
8. [REDACTED], the Michigan Administrative Hearing System received Appellant's request for hearing. (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 [REDACTED], 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 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,  
November 2009, pages 1-2 of 3.*

The Waiver Agency representative testified that the following a telephone screening, Appellant passed the screening but was placed on the waitlist because the Waiver Program was at capacity. The Waiver Agency representative also indicated that an Imminent Risk Assessment was not completed because Appellant had not yet applied for Medicaid. The Waiver Agency representative testified that the Waiver Agency provided to Appellant's mother the information she needed to complete a Medicaid application. Appellant's mother was also advised that Appellant would need to apply for State disability assistance because she is under age █████. The Waiver Agency representative also testified that they followed up with Appellant on █████, but she still had not applied for Medicaid.

Appellant's mother testified that she is just trying to get some help for Appellant because her dementia is worsening. Appellant's mother testified that she is in the process of completing the Medicaid application and will be submitting it soon. Appellant's mother worried that Appellant would not be eligible for Medicaid because of her husband's disability income. Appellant's mother was advised that the Department of Human Services (DHS) will make an eligibility determination regarding Medicaid and that her daughter will have the right to a DHS hearing if she is found ineligible for Medicaid.

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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.

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 Appellant and placed Appellant on the waiting list.

**IT IS THEREFORE ORDERED** that:

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



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

cc:



Date Signed: 5/7/2013

Date Mailed: 5/8/2013

**\*\*\* 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.