

**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:

Evelyn Burns,

Appellant

Docket No. 2013-52273 EDW
Case No. 1044950991

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 [REDACTED]. Appellant appeared and testified. [REDACTED], Appellant's representative/son appeared and testified on Appellant's behalf.

[REDACTED], Clinical Manager, represented the Department's waiver agency, [REDACTED] and testified on the 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 her 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 [REDACTED] to provide MI Choice Waiver services to eligible beneficiaries.
2. [REDACTED] 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 [REDACTED] year-old woman, whose date of birth is [REDACTED].
4. On [REDACTED], a Specialist from [REDACTED] conducted a telephone screen with the Appellant. (Exhibit A, pp. 12-15)

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5. Appellant passed the Telephone Intake Guidelines and qualified to be assessed for the MI Choice Waiver program; however, [REDACTED] was at capacity related to budget and is maintaining a waiting list.
6. On [REDACTED], [REDACTED] notified the Appellant in writing that the MI Choice Waiver program was at program capacity, but that she had been placed on the Waiver Enrollment Waiting List. (Exhibit A, p 10).
7. On [REDACTED], the Michigan Administrative Hearing System received a request for hearing from the Appellant.

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 requested 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 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 U. S. Department of Health and Human Services, on page 5 of a letter to State Medical Directors labeled Olmstead Update Number 4 (SMDL #01-006), dated January 10, 2001, and in reply to the following question responded, in part:

May a State use the program's funding appropriation to specify the total number of people eligible for an HCBS waiver?

CMS has allowed States to indicate that the total number of people to be served may be the lesser of either (a) a specific number pre-determined by the State and approved by CMS (the approved “factor C” value), or (b) a number derived from the amount of money the legislature has made available (together with corresponding Federal match). The current HCBS waiver preprint contains both options.

In this case, Appellant made a request for MI Choice Waiver services. Ms. Lavery testified that the Waiver Agency is at capacity for MI Choice waiver enrollees, and in order to ensure continued services to current waiver enrollees, the agency could not assess Appellant for waiver services. The Waiver Agency maintains a waiting list and contacts individuals on the list on a first come-first served basis when sufficient resources become available to serve additional individuals. It then determines how many individuals from the list it can assess and assesses a limited number of individuals from the list to determine if they may be eligible for enrollment in the MI Choice Waiver program.

The evidence in this case demonstrates that the MI Choice Waiver Agency maintains a waiting list as allowed by the federal government. The MI Choice Waiver Agency established that it implemented the MI Choice waiting list procedure in the manner in which CMS has approved, and in accordance with Department policy. Therefore, its actions were proper. This Administrative Law Judge does not have the authority to overrule or make exceptions to the applicable law and policy.

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 for MI Choice Waiver Services and placed her on a waiting list due to limited financial resources.

IT IS THEREFORE ORDERED that:

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

ls

Marya A. Nelson-Davis
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]

Date Signed: August 13, 2013

Date Mailed: August 13, 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.