

**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. 2013-60769 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 ██████████ ██████████ sister-in-law, represented the Appellant. ██████████ sister and Power of Attorney, appeared as a witness for the Appellant.

██████████, Office Manager, appeared on behalf of ██████████ (██████████ or Waiver Agency). ██████████ is a MI Choice Waiver agent for the Michigan Department of Community Health.

ISSUE

Did the Waiver Agency properly place Appellant on a waiting list for the MI Choice Waiver program?

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.
2. ██████████ must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.

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3. On [REDACTED] [REDACTED] received a call from the Appellant's sister-in-law requesting services for the Appellant through the MI Choice Waiver program. [REDACTED] completed the Telephone Intake Guidelines screening and determined that the Appellant has Medicaid and qualified physically. (Office Manager Testimony)
4. On [REDACTED] notified the Appellant in writing that the MI Choice Waiver program was at program capacity, therefore, she was placed on the waiting list for MI Choice services. (Exhibit 1, page 2)
5. On [REDACTED], the request for hearing filed on the Appellant's behalf was received by the Michigan Administrative Hearing System. On [REDACTED] the request for hearing was re-submitted with the Appellant's signature. (Request for Hearing)

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 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 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 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, 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....

The Waiver Agency has established a waiting list due to the limited resources it has to provide services. On ██████████ received a call from the Appellant's sister-in-law requesting services for the Appellant through the MI Choice Waiver program. ██████████ completed the Telephone Intake Guidelines screening and determined that the Appellant has Medicaid and qualified physically. (Office Manager Testimony) The Appellant was therefore placed on the waiting list for the MI Choice Waiver program services at that time. (Exhibit 1, pages 1-2) The Office Manager testified that there was also a call on ██████████ from another sister stating the Appellant was in the hospital. ██████████ advised that sister to let ██████████ know if the Appellant goes to a nursing home. If the Appellant was to then transition out of a

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nursing facility this could be considered. No subsequent call was received by ██████████ indicating the Appellant went into a nursing facility. The Office Manager further stated that the Appellant did not meet any of the other criteria for priority on the wait list. (Office Manager Testimony)

The Appellant's sister-in-law indicated that the Appellant spent ██████ days in a nursing home after the hospitalization, but they did not realize this could be considered for the MI Choice Waiver program wait list. That nursing facility stay was only temporary and for now, the Appellant is not in a nursing facility. Additionally, the Appellant's sister-in-law stated that if the Appellant is asked questions about whether she can do things for herself, the Appellant will answer yes when in reality the answer is actually no. (Sister in Law Testimony)

The Appellant's sister provided background regarding how the Appellant ended up in their care. The Appellant's sister's testimony indicated that previously there was an Adult Protective Services case for the Appellant. Further, the Appellant's sister explained that the Appellant needs assistance managing every bit of her life. However, the Appellant's family members have other responsibilities such as work and caring for other persons significant needs. Therefore, there has been a lot of anxiety. (Sister Testimony)

The Appellant's sister and sister-in-law provided testimony explaining the Appellant's needs for assistance. However, the ██████████ Adequate Action Notice was not based on whether or not the Appellant has needs for assistance. Rather, the Appellant was placed on the waiting list for the MI Choice Waiver Program because the program is at capacity. There was no evidence to establish that the Appellant met the criteria for priority on the waiting list based on the information provided to ██████████ prior to this hearing. The Waiver Agency considered the priority categories for the waiting list, but had not been notified when the Appellant was in a nursing facility nor had there been any indication that the Appellant has an active Adult Protective Services case. Accordingly, ██████████ placed the Appellant on the waiting list in chronological order by the date services were requested. The Waiver Agency provided sufficient evidence that it implemented the MI Choice waiting list procedure in accordance with Department policy based on the available information; therefore, its actions were proper.

While she remains on the wait list, the Appellant can always contact the waiver agency if her circumstances change such that she may have become eligible for diversion status or if it is discovered that the Appellant currently has an active Adult Protective Services case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied assessment of the Appellant and placed the Appellant on the waiting list.

IT IS THEREFORE ORDERED that:

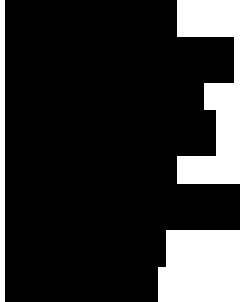
The Department's decision is **AFFIRMED**.

/s/
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 

Date Mailed 

CL/db

cc: 

***** 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.