

**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. 2013-64488 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 appeared and testified on her own behalf.

██████████, Intake Specialist, ██████████
██████████ appeared and testified on behalf of the Waiver Agency.

ISSUE

Did the Department's Waiver Agency properly deny Appellant's request for MI Choice Waiver services?

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 Appellant is an ██████-year-old woman, (██████████) who requested enrollment in the MI Choice Waiver Program. (Exhibit C and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
3. On ██████████ ██████████ Intake Specialist for the Waiver Agency completed the Telephone Intake Guidelines screening. The Waiver Agency determined that Appellant did not pass the Telephone Intake Guidelines screening. (Exhibits B, C and testimony).

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4. On ██████████ Appellant was sent an Adequate Action notice advising that she did not qualify for the MI Choice Waiver program on the standardized telephone screening tool. Appellant was advised of her Medicaid Fair Hearing rights. (Exhibit C and testimony).
5. On ██████████ MAHS received the Appellant's request for an Administrative 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 was receiving 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 (CMS, 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's witness ██████████, Intake Specialist for the Waiver Agency, stated that on ██████████ she completed the Telephone Intake Guidelines (TIG) screening. ██████████ stated the Appellant called in and she went over the questions on the TIG and the Appellant answered no on all the pertinent questions, indicating she did not qualify under any of the Doors on the TIG. Accordingly, ██████████. ██████████ determined that Appellant did not pass the Telephone Intake Guidelines screening and was not found to be eligible for the MI Choice Waiver program. Thereafter, on ██████████ sent Appellant an Adequate Action notice advising that she did not qualify for the MI Choice Waiver program. (Exhibit C).

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The *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2013, pp. 5-6, outlines the approved evaluation policy for the MI Choice Waiver program:

3.2 TELEPHONE INTAKE GUIDELINES

The Telephone Intake Guidelines (TIG) is a list of questions designed to screen applicants for eligibility and further assessment. Additional probative questions are permissible when needed to clarify eligibility. The TIG does not, in itself, establish program eligibility. Use of the TIG is mandatory for MI Choice waiver agencies prior to placing applicants on a MI Choice waiting list when the agency is operating at its capacity. The date of the TIG contact establishes the chronological placement of the applicant on the waiting list. The TIG may be found on the MDCH website. (Refer to the Directory Appendix for website information).

Applicants who request services in MI Choice must be screened by telephone using the TIG at the time of their request. If the caller is seeking services for another individual, the waiver agency shall either contact the applicant for whom services are being requested or complete the TIG to the extent possible using information known to the caller. For applicants who are deaf, hearing impaired, or otherwise unable to participate in a telephone interview, it is acceptable to use an interpreter, a third-party in the interview, or assistive technology to facilitate the exchange of information.

As a rule, nursing facility residents who are seeking to transition into MI Choice are not contacted by telephone but rather are interviewed in the nursing facility. For the purposes of establishing a point of reference for the waiting list, the date of the initial nursing facility visit shall be considered the same as conducting a TIG, so long as the functional and financial objectives of a TIG are met. (Refer to the Waiting Lists subsection for additional information.) Specifically, the interview must establish a reasonable expectation that the applicant will meet the functional and financial eligibility requirements of the MI Choice program within the next 60 days.

Applicants who are expected to be ineligible based on TIG information may request a face-to-face evaluation using the Michigan Medicaid Nursing Facility Level of Care

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Determination and financial eligibility criteria. Such evaluations should be conducted as soon as possible, but must be done within 10 business days of the date the TIG was administered. MI Choice waiver agencies must issue an adverse action notice advising applicants of any and all appeal rights when the applicant appears ineligible either through the TIG or a face-to-face evaluation.

When an applicant appears to be functionally eligible based on the TIG, but is not expected to meet the financial eligibility requirements, the MI Choice waiver agency must place the applicant on the agency's waiting list if it is anticipated that the applicant will become financially eligible within 60 days. Individuals may be placed on the waiting lists of multiple waiver agencies.

The TIG is the only recognized tool accepted for telephonic screening of MI Choice applicants.

The Appellant testified during the hearing that she is totally disabled and uses a walker. She indicated she has neuropathy, her arthritis is bad, she has fallen, and she is not allowed to use the shower. The Appellant acknowledged that she had recent back surgery and just got out of the hospital. The Appellant further indicated that she is on several medications for high blood pressure, anxiety, and depression; she has a visiting nurse; and, she has temporary help that comes in to help her bathe. Appellant also indicated she had past knee surgery, but thinks she will have to have her knees redone, and she also fell and broke her neck in [REDACTED], and now her neck hurts all the time. Appellant states she can't use the vacuum and can't cook or bake like she used to do.

A review of the *Medicaid Provider Manual, MI Choice Waiver, Telephone Intake Guidelines*, and applying these policies to the Appellant finds that the Waiver Agency properly determined that the Appellant was not eligible for the MI Choice program. The information gathered at the time of the telephone screening shows that Appellant did not meet the eligibility criteria to be assessed for the MI Choice Waiver Program.

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 policy clearly states that the MI Choice Waiver Program agent shall complete the TIG to determine potential eligibility. If the individual does not pass the telephone screen, they cannot be assessed for the waiver program, (i.e., they are not found eligible for the program).

The MI Choice Waiver agency provided sufficient evidence that it followed the MI Choice telephone screening procedure in the manner in which CMS has approved and

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in accordance to Department policy; therefore, its actions were proper. [REDACTED] did state that she offered Appellant a life line, but she already had one. She also placed the Appellant on the waiting list for Care Management with a high priority score, which is a program that can provide the Appellant assistance with bathing, housework and respite care. [REDACTED] also offered to call the Appellant and do a new screening to see if her condition had changed enough since the [REDACTED] screening such that she might now qualify for the MI Choice Waiver program.

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 determined that the Appellant was not eligible for the MI Choice Waiver program at the time of the [REDACTED] screening.

IT IS THEREFORE ORDERED that:

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

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc: [REDACTED]

***** 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.