

**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. 14-009216 EDW
Case No. [REDACTED]

[REDACTED]

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 [REDACTED]. Appellant was represented by her daughter, [REDACTED].

[REDACTED], Manager for [REDACTED] for the [REDACTED] (Waiver Agency or Agency), represented the Department of Community Health's (Department) subcontracting waiver agency.

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 the Agency to provide MI Choice Waiver services to eligible beneficiaries.
2. The Agency implements the MI Choice Waiver program in accordance with Michigan's Waiver Agreement, Department policy and its contract with the Department.
3. Appellant is an [REDACTED] year-old female beneficiary of the Medicaid program who requested [REDACTED] services through the MI Choice Waiver Program on [REDACTED].

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4. On ██████████ an Intake Specialist from the Agency conducted a telephone screen with Appellant, which showed that Appellant was eligible for assessment for the MI Choice Waiver Program. The Program was at capacity. Appellant was placed on the wait list.
5. On ██████████, the Agency notified Appellant in writing and Appellant's representative verbally that the MI Choice Waiver Program was at program capacity but that she had been placed on the Waiver Enrollment Waiting List.
6. On ██████████, Appellant filed a timely hearing request with the Michigan Administrative Hearing System.

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 *Medicaid Provider Manual, MI Choice Waive Chapter*, April 1, 2014, pp. 6-8, applicable to the facts herein, states in part:

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 guidelines.)

Applicants who request services in MI Choice must be screened by telephone using the TIG at the time of their request.

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

3.3 ENROLLMENT CAPACITY

MI Choice capacity is limited to the number of participants who can be adequately served under the annual legislative appropriation for the program. Enrollment capacity for each individual waiver agency is at the agency's discretion based on available funding and the expected costs of maintaining services to enrolled participants.

Capacity is not determined by an allocated number of program slots. While numbers of slots must be monitored for federal reporting purposes, waiver agencies are expected to enroll any applicant for whom they have resources to serve.

3.4 WAITING LISTS

Whenever the number of participants receiving services through MI Choice exceeds the existing program capacity, any screened applicant must be placed on the waiver agency's waiting list. Waiting lists must be actively maintained and managed by each MI Choice waiver agency. The enrollment process for the MI Choice program is not ever actually or constructively closed. The applicant's place on the waiting list is determined by priority category in the order described below. Within each category, an applicant is placed on the list in chronological order based on the date of their request for services. This is the only approved method of accessing waiver services when the waiver program is at capacity.

3.4.A. PRIORITY CATEGORIES

Applicants will be placed on a waiting list by priority category and then chronologically by date of request of services. Enrollment in MI Choice is assigned on a first-come/first served basis using the following categories, listed in order of priority given.

The Waiver Agency witness testified that the MI Choice Waiver Program is at capacity for MI Choice Waiver enrollees. The Waiver Agency witness said that from the telephone intake it appeared that Appellant was eligible for assessment for the MI Choice Waiver Program, but that Appellant was placed on the waiting list because the Program was at capacity. The Waiver Agency 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.

Appellant representative testified that Appellant needs services. However, Appellant's eligibility is based on the chronological order of the Wait List; MI Choice is not an entitlement program as Medicaid. Rather, federal and state law limits the number of cases based on financial resources.

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 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 Waiver Agency properly conducted Appellant's request through its intake and properly placed Appellant on the MI Choice Waiver program wait list.

IT IS THEREFORE ORDERED that:

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

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Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

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CC:

[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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.