

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
(517) 335-3997; Fax: (517) 373-4147

**IN THE MATTER OF:**

██████████

Appellant.

\_\_\_\_\_ /

**Docket No.** 14-013539 EDW

**Case No.** █ 4 █

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████, Appellant's friend and caretaker, appeared and testified on Appellant's behalf. Appellant was also present for the hearing. ██████████, Office Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency" or ██████████).

**ISSUE**

Did the Waiver Agency properly deny Appellant's request for services through 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. On ██████████, Appellant applied for waiver services through the MI Choice Waiver Program and a telephone intake was completed. (Respondent's Exhibit B, pages 1-10).
2. Appellant was subsequently found to be probably eligible for the waiver program, but the program was at capacity at that time and Appellant was therefore placed on a waiting list, in chronological order, due to a lack of available slots in the program. (Testimony of ██████████).
3. However, while Appellant was placed on the wait list, no information was entered with respect to the ██████████ intake into the appropriate system. (Respondent's Exhibit B, pages 1-10; Testimony of ██████████).

4. Accordingly, when Appellant's case came up for review on ██████████, another telephone intake was completed with Appellant. (Respondent's Exhibit C, pages 1-10; Testimony of ██████████)
5. During that intake, ██████████ found that Appellant was not eligible for the waiver program based on her answers to the intake questions. (Respondent's Exhibit C, page 8).
6. On ██████████, the Waiver Agency also sent Appellant written notice that her request was services was denied. (Respondent's Exhibit A, page 1).
7. On Oc ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed by Appellant and her representative in this matter. (Petitioner's Exhibit 1, page 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. 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.

Appellant is seeking services through the Department's Home and Community Based Services for Elderly and Disabled. 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 ██████████, 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 (MPM) outlines the approved evaluation policy and the MI Choice waiting list policy:

### **3.2 MI CHOICE INTAKE GUIDELINES [TITLE AND OTHER CHANGES MADE 10/1/14]**

The MI Choice Intake Guidelines 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 MI Choice Intake Guidelines does not, in itself, establish program eligibility. A properly completed MI Choice Intake Guidelines 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. Individuals who score as Level C, Level D, Level D1 or Level E are those applicants determined potentially eligible for program enrollment and will be placed on the MI Choice waiting list. The date of the MI Choice Intake Guidelines contact establishes the chronological placement of the applicant on the waiting list. The MI Choice Intake Guidelines may be found on the MDCH website. (Refer to the Directory Appendix for website information.)

When the waiver agency is at capacity, applicants requesting enrollment in MI Choice must either be screened by telephone or in person using the MI Choice Intake Guidelines at the time of their request for proper placement on the waiting list. If a caller is seeking services for another individual, the waiver agency shall either contact the applicant for whom services are being requested or complete the MI Choice Intake Guidelines 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 (introductory interview) shall be considered the same as conducting a MI Choice Intake Guidelines, so long as the functional

objectives of the MI Choice Intake Guidelines are met. (Refer to the Waiting Lists subsection for additional information.) Specifically, the introductory meeting 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 MI Choice Intake Guidelines information may request a face-to-face evaluation using the Michigan Medicaid Nursing Facility Level of Care 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 MI Choice Intake Guidelines 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 MI Choice Intake Guidelines or a face-to-face evaluation.

When an applicant appears to be functionally eligible based on the MI Choice Intake Guidelines 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 MI Choice Intake Guidelines is the only recognized tool accepted for telephonic screening of MI Choice applicants and is only accessible to MI Choice waiver agencies. It is not intended to be used for any other purpose within the MI Choice program, nor any other Medicaid program. MI Choice waiver agencies must collect MI Choice Intake Guidelines data electronically using software through the department's contracted vendor. **(revised per bulletin MSA 14-27)**

### **3.3 ENROLLMENT CAPACITY [CHANGE MADE 10/1/14]**

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.

Waiver agencies are allocated a specific number of slots each fiscal year based upon legislative appropriation and must manage enrollments within that allocation. **(revised 10/1/14)**

### 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.

*MPM, October 1, 2014 version  
MI Choice Waiver Chapter, pages 5-7  
(Internal highlighting omitted)*

Here, ██████████ determined that Appellant was ineligible for waiver services based on her MI Choice Intake Guidelines information and, as required, it issued an adverse action notice advising Appellant of her right to appeal that determination.

Appellant subsequently filed an appeal regarding the denial of services and, in doing so, bears the burden of proving by a preponderance of the evidence the Waiver Agency erred in denying her request for services. Moreover, this Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information it had at the time it made that decision.

On appeal, Appellant's representative does not dispute the Waiver Agency's specific findings or what it recorded Appellant as reporting during the intake. Instead, Appellant's representative testified that Appellant reported that she is capable of doing more than she actually is and that, if the Waiver Agency had received accurate information, it would have found Appellant eligible for the program.

However, even if Appellant's representative's testimony is true, this Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information it had at the time it made its decision. Here, it is undisputed that the Waiver Agency accurately recorded what Appellant reported and, based on her own reports, she did not meet the criteria for services. Accordingly, based on Appellant's reports and the available information, the Waiver Agency's decision must be affirmed.

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To the extent Appellant and her representative have new or updated information to provide, they can always re-request services for Appellant. With respect to the decision at issue in this case, however, the denial must be affirmed given the information available at the time.

**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 Appellant's request for services.

**IT IS THEREFORE ORDERED** that:

The Waiver Agency's decision is **AFFIRMED**.



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Steven J. Kibit  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.