

**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:**

██████████,

Appellant

Docket No. 2014-35394 EDW  
Case No. ██████████

**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 ██████████. The Appellant appeared and offered testimony. ██████████, Intake Specialist, represented the ██████████ MI Choice Waiver Agency (Agency).

**ISSUE**

Did the Agency properly remove the Appellant from the MI Choice wait 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. On ██████████, the Appellant was placed on the MI Choice wait list
2. At some point in time prior to ██████████, the Appellant's name came up on the wait list.
3. Just prior to ██████████ and up through ██████████, the Agency made several telephone calls to the Appellant.
4. Just prior to ██████████ and up through ██████████, the Appellant made several telephone calls to the Agency.
5. Between ██████████ and up through ██████████, the Appellant was admitted to a couple of hospitals for different durations.
6. ██████████, the Agency sent the Appellant an Advance Action Notice. The notice indicated the Agency was removing the Appellant from the wait list as they were unable to contact the Appellant for an in-home

assessment. The Agency provided the Appellant until ██████████ to make contact.

7. On ██████████, the Appellant requested a 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)*

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as "medical assistance" under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. *42 CFR 430.25(c)(2)*

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. Medicaid Provider Manual §3.4 p. 6, April 1, 2014.

The Agency in this case, argued the Appellant was removed from the wait list after failing to respond to telephone calls and a letter. The Agency however, provided second hand testimony and could not provide the specific policy that allowed for them to remove the Appellant from the wait list. Likewise, after review of the applicable policy I too could not find any policy that allows for the removal of the Appellant from the wait list.

Additionally, I find both parties to be credible and find that there were numerous attempts by each party to reach the other. I also find it ironic that the Agency made contact with the Appellant during the hearing.

Based on the evidence presented, I do not find the Agency acted in accordance with policy in removing the Appellant from the wait list as I could not find any policy that allows for the removal in this scenario and further find it odd that the Agency continued to try to reach out to the Appellant to follow up with an assessment after they had allegedly removed her from the wait list. Accordingly, I find evidence to reverse the Agency in this matter.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Waiver Agency improperly removed the Appellant's name from the MI Choice Waiver Program wait list.

**IT IS THEREFORE ORDERED** that:

The Department's decision is REVERSED.

The Department is ordered to re-instate the Appellant's place on the MI Choice Waiver Program wait list with a beginning date of ██████████  
██████ and to arrange for an in-home assessment to determine eligibility if applicable.

\_\_\_\_\_  
Corey A. Arendt  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

CAA ██████

**Docket No. 2014-35394 EDW**  
**Decision and Order**

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.