

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. 2014-5901 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.

██████████, Waiver Director, represented the Department's 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. As of ██████████, the Appellant was receiving Home Help Services (HHS).
3. On ██████████, the HHS were terminated.
4. On or around ██████████, the Appellant's name came up on the wait list.
5. On ██████████, the Appellant was removed from the wait list for failing to contact the Agency regarding his name being up on the wait list.
6. On ██████████, the Appellant contacted the Agency to inquire about his place on the wait list. The Agency told the Appellant he had been

removed from the list for failing to contact the Agency within 10 days of his name being up. The Appellant asked to be placed back on the wait list.

7. On [REDACTED], the Agency placed the Appellant's name back on the wait list.
8. On [REDACTED], 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, July 1, 2013.

The Agency in this case, argued the Appellant was removed from the wait list after failing to respond to two telephone calls ([REDACTED], [REDACTED]) and a “ten day letter”. The Agency however, only provided second hand testimony of the alleged contacts. The actual letter was not presented nor was their testimony from the person who prepared and sent the letter. Additionally, the individuals who allegedly placed the phone calls did not testify.

The Appellant in this matter indicated he did not receive a “ten day letter” and did not recall receiving phone calls on either [REDACTED] or [REDACTED] regarding his name being up on the wait list.

Based on the evidence presented, I do not find the Agency acted in accordance with policy in removing the Appellant from the wait list. The Agency failed to provide any reliable first hand evidence of the Appellant failing to contact the Agency, or of the Agency notifying the Appellant that his name was up on the waiver 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.

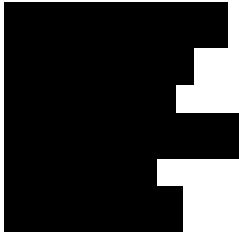
The Department is ordered to re-instate the Appellant’s place on the MI Choice Waiver Program wait list with a beginning date of [REDACTED].

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

[REDACTED]

Docket No. 2014-5901 EDW
Decision and Order

cc:



Date Signed: December 3, 2013

Date Mailed: December 3, 2013

***** 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.