

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. 15-000499 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 ██████████. The Appellant appeared and testified on his own behalf.

██████████, Eligibility Specialist and Hearings Coordinator, appeared and testified on behalf of the ██████████, the Department's Waiver Agency. ██████████, Associate Director for ██████████, ██████████ was also present but did not testify.

ISSUE

Did the Department's MI Choice Waiver Agency properly determine that the Appellant did not pass the MI Choice Intake Guidelines?

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 a ██████-year-old, (DOB: 1 ██████████), who requested enrollment in the MI Choice Waiver Program. (Exhibit A, pp. 3, 7 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Testimony).
3. On ██████████, the Appellant's daughter ██████████ contacted the Waiver Agency to request MI Choice Waiver services. ██████████ an Intake Specialist talked with the Appellant's daughter

Docket No. 15-000499 EDW
Decision and Order

and conducted a screening using the MI Choice Intake Guidelines and determined that the Appellant did not pass the MI Choice Intake Guidelines. Appellant was determined ineligible by scoring at Level A. (Exhibit A, p. 3, 5, 7-16 and testimony).

4. On [REDACTED] the Waiver Agency sent Appellant an Adequate Action Notice advising her that she did not pass the MI Choice Intake Guidelines. The written notification informed Appellant of her rights to a fair hearing. (Exhibit A, p. 1 and testimony).
5. On [REDACTED] MAHS received the Appellant's request for an Administrative Hearing. (Exhibit A, p. 4).

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 requested 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 policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2015, which provides in part:

SECTION 1 – GENERAL INFORMATION

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports

required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).

* * *

SECTION 2 - ELIGIBILITY

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish his/her financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program. (p. 2, emphasis added).

The *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2015, pp. 5-6, outlines the approved evaluation policy:

3.2 MI CHOICE INTAKE GUIDELINES

The MI Choice Intake Guidelines is a list of questions designed to screen applicants for eligibility and further assessment. Additional probative

Docket No. 15-000499 EDW
Decision and Order

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.

Docket No. 15-000499 EDW
Decision and Order

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.

The Waiver Agency provided reliable evidence that on [REDACTED] the Appellant's daughter contacted the Waiver Agency to request MI Choice Waiver services. [REDACTED] an Intake Specialist talked with the Appellant's daughter and conducted a screening using the MI Choice Intake Guidelines and determined that the Appellant did not pass the MI Choice Intake Guidelines. Appellant was found to be ineligible by scoring at Level A. On [REDACTED] the Waiver Agency sent Appellant an Adequate Action Notice advising her that she did not pass the MI Choice Intake Guidelines. The written notification informed Appellant of her rights to a fair hearing.

Appellant testified that her daughter did not have all the facts when she called the Waiver Agency. Appellant indicated she is getting a housekeeper through the Council on Aging, who will be assisting with cleaning the bathrooms and doing all the vacuuming. Appellant said she is also getting a nurse to come and assist with medication set-up, assisting with filling her pill boxes. Appellant mentioned some skilled rehab therapies and said she was seeing [REDACTED] a psychiatrist, for a bi-polar condition. Appellant indicated she was getting the services she needed through the Council on Aging.

A review of the *MI Choice Waiver* policies contained in the Medicaid Provider Manual finds that the Northeast Michigan Community Services properly found that the Appellant did not pass the MI Choice Intake Guidelines, because she was determine ineligible by scoring at Level A. The information gathered at the time of the telephone screen supports the Waiver Agency's determination that she did not pass the MI Choice Intake Guidelines.

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.

Docket No. 15-000499 EDW
Decision and Order

The MI Choice Waiver Agency provided sufficient evidence that it properly utilized the MI Choice Intake Guidelines for screening purposes and found that the Appellant did not pass the MI Choice Intake Guidelines.

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 utilized the MI Choice Intake Guidelines for screening purposes and found that the Appellant did not pass the MI Choice Intake Guidelines.

IT IS THEREFORE ORDERED that:

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

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, 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.