

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 15-015960 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified. Appellant's mother and caregiver, ██████████, also appeared and testified.

██████████, Team Leader for the ██████████, appeared as a witness for the Medicaid Waiver Agency, ██████████ (Respondent or Waiver Agency).

ISSUE

Did the Waiver Agency properly determine that Appellant was no longer eligible 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. Appellant is a Medicaid beneficiary who was on the wait list for the MI Choice Waiver Program.
2. Appellant receives RSDI income and had a Medicaid spend-down.
3. Appellant is a quadriplegic.
4. The Waiver Agency is a contract agent of the Michigan Department of Health and Human Services (MDHHS) and is responsible for waiver eligibility determinations and the provision of MI Choice Waiver Services. (Exhibit A, Testimony)

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5. On [REDACTED], Appellant was contacted by telephone as her name had reached the top of the wait list.
6. At that time Appellant was enrolled in the Michigan Department of Health and Human Services Adult Home Help Grant.
7. The Department has made a determination that if the Home Help Program can meet the individual's needs, it should be first option.
8. In order for an individual currently receiving Home Help Services to be considered for the MI choice Waiver Program, the person must first request additional Home Help Services and be denied.
9. On [REDACTED] and on [REDACTED], Respondent told Appellant that she needed to request additional services from the Home Help Services.
10. On [REDACTED], the Respondent determined that Appellant had not pursued a home Help Grant appeal and removed her from the MI Choice wait list.

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)

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, April 1, 2014, 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.1, emphasis added).

Medicaid Provider Manual, MI Choice Waiver, **2.3 NEED FOR MI CHOICE SERVICES states:**

In addition to meeting financial and functional eligibility requirements and to be enrolled in the program, MI Choice applicants must demonstrate the need for a minimum of two covered services, one of which must be Supports Coordination, as determined through an in-person assessment and the person-centered planning process. Applicants must also agree to accept to receive MI Choice services on a regular basis, at least every 30 days.

An applicant cannot be enrolled in MI Choice if their service and support needs can be fully met through the intervention of State Plan or other available services. State Plan and MI Choice services are not interchangeable. MI Choice services differ in nature and scope from similar State Plan services and often have more stringent provider qualifications.

3.4WAITING LISTS [CHANGE MADE 4/1/15] states in pertinent part:

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.

Each waiver agency must follow these waiting list removal guidelines when removing an applicant from the MI Choice waiting list. A MI Choice waiver agency may remove an applicant from the MI Choice waiting list if the applicant:

- Enrolled in MI Choice;
- **Enrolled in another community-based service or program;**

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- Was admitted to a nursing facility and is no longer interested in MI Choice;
- Died;
- Moved out of state;
- Was not eligible for MI Choice;
- Was no longer interested in or refused MI Choice enrollment;

In the instant case, Appellant remains a recipient of the Home Help Services Program. Her care needs are being met by the home Help Provider. She does not qualify to remain on the MI Choice Waiver Program wait list under the circumstances. The Medicaid Waiver Program provides community based services to help a person stay at home rather than face nursing home or hospital admission.

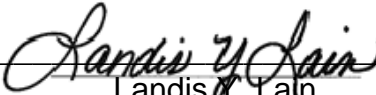
Based on the information at the time of the LOC determination, Appellant did not meet the MI Choice Waiver enrollment criteria because her needs were being met by Home Help Services. Appellant was not denied enhanced or increased Home Help Services. Accordingly, the Waiver Agency properly determined that Appellant was properly removed from the MI Choice Program Waiver Program waitlist.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined that Appellant should be removed from the MI Choice Waiver Program waitlist.

IT IS THEREFORE ORDERED that:

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



Landis W. Lain

Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

cc:



LYL/

Date Signed:



Date Mailed:



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***** 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. 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.