

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-018265 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.*, and upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████, a family friend, appeared and testified on Appellant's behalf. ██████████, Resource Center Team Leader, appeared and testified on behalf of the Department of Health and Human Services' Waiver Agency, the ██████████ ("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 or about ██████████, Appellant applied for waiver services with ██████████ through the MI Choice Waiver Program and a telephone intake was completed. (Testimony of Respondent's representative).
2. During that intake, the ██████████ found that Appellant was not eligible for the waiver program based on the answers to the intake questions. (Testimony of Respondent's Representative).
3. The Waiver Agency also sent Appellant written notice that her request for services was denied. (Testimony of Respondent's Representative).

4. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter with respect to that denial. (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 to the Michigan Department of Health and Human Services. 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 governing policy for the MI Choice Waiver program and, with respect to functional eligibility and the intake process for the program, the applicable version of the MPM states in part:

2.2 FUNCTIONAL ELIGIBILITY

The MI Choice waiver agency must verify an applicant's medical/functional eligibility for program enrollment by inputting a valid Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) into the online LOCD application. A valid LOCD is defined as an LOCD that was completed in-person with the applicant according to MDCH

policy and put in the online LOCD application within 14 calendar days after the date of enrollment into the MI Choice program. (Refer to the Directory Appendix for website information.) The LOCD is discussed in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter. Additional information can be found in the Nursing Facility Coverages Chapter and is applicable to MI Choice applicants and participants.

The applicant must also demonstrate a continuing need for and use of at least two covered MI Choice services, one of which must be Supports Coordination. This need is originally established through the Initial Assessment using the process outlined in the Need for MI Choice Services subsection of this chapter.

* * *

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 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

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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.

MPM, July 1, 2015 version
MI Choice Waiver Chapter, pages 1, 5-6

Here, Respondent conducted an intake using the required MI Choice Intake Guidelines and, based on the answers Appellant gave during the intake, she scored as a Level B. Given her level, the Waiver Agency also determined that Appellant was ineligible for waiver services per policy and, as required, it issued an adverse action notice advising Appellant of her right to appeal that determination.

Appellant and her representative subsequently filed an appeal regarding the denial of services and, in doing so, bear the burden of proving by a preponderance of the evidence that 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 did not dispute the Waiver Agency's specific findings or what it reported Appellant as stating during the intake. Instead, Appellant's representative just testified that Appellant has a need for assistance given her medical conditions and that they have been working with new providers and facilities in order to gather new documentation regarding Appellant's needs.

However, 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 and, in this case, it is undisputed that the Waiver Agency accurately recorded what Appellant reported and that, based on those reports, she did not meet the criteria for services at that time. Accordingly, based on the available information, the Waiver Agency's decision must be affirmed.

To the extent Appellant's conditions or circumstances have changed or she and her representative have new or updated information to provide, they can always contact the Waiver Agency and reapply for services. 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**.

Steven Kibit

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

Date Signed: ██████████

Date Mailed: ██████████

SK/db

cc: ██████████
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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. 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.