

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

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

MAHS Docket No. 15-021516 EDW
Agency 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.*, and upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Sharon Leonard, the Appellant, appeared on her own behalf. Sandra Landskroener, Intake Specialist, appeared and testified on behalf of the Department of Health and Human Services' Waiver Agency, ██████████ ("Waiver Agency" or ██████████).

ISSUES

Did the Waiver Agency properly place Appellant on a waiting list for the MI Choice Waiver Program?

Did the Waiver Agency properly remove Appellant from their waiting list 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. ██████████ is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. On ██████████, Appellant applied for waiver services, a telephone intake was completed, and Appellant scored as Level D. (Exhibit A, pp. 2-13)
3. During that screening, Appellant was found to be potentially eligible for the waiver program. (Exhibit A, pp. 2 and 11; Testimony)

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4. Appellant was placed on the waiting list in chronological order due to a lack of available slots in the program. (Exhibit A, pp. 2, 11 and 14; Testimony)
5. That same day, the Waiver Agency sent Appellant written notice that she had been placed on the waiting list in chronological order. (Exhibit A, p. 14)
6. On [REDACTED], Appellant was removed from the waiting list due to the Waiver Agency being unable to contact/locate Appellant. (Exhibit A, p. 2; Testimony)
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter. (Exhibit 1, p. 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 (formerly HCFA) to the Department. Regional agencies, in this case TSA, 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 approved evaluation policy and the MI Choice waiting list 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 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 MDHHS 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 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 MDHHS contracted vendor.

3.3 ENROLLMENT CAPACITY

MI Choice capacity is limited to the number of participants who can be adequately served under the annual legislative appropriation for the program. Enrollment capacity for each individual waiver agency is at the agency's discretion based on available funding and the expected costs of maintaining services to enrolled participants.

Waiver agencies are allocated a specific number of slots each fiscal year based upon legislative appropriation and must manage enrollments within that allocation.

3.4 WAITING LISTS

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;
- 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; or
- Was unable to be contacted by the waiver agency using all of the following methods:
 - The waiver agency called at least three times with a varied day of week and time of day.
 - If the waiver agency was able to leave a message, the applicant did not return the call within 10 business days.
 - The waiver agency sent a letter to the applicant with a deadline to contact the waiver agency within 12 business days, and the applicant either did not respond or mail was returned.

An Adequate Action Notice must be sent to the applicant no later than the date of removal from the MI Choice waiting list. MI Choice waiver agencies can obtain a template for the Adequate Action Notice on the MDHHS website. (Refer to the Directory Appendix for website information.)

MPM, July 1, 2015 version
MI Choice Waiver Chapter, pp. 5-7

Moreover, with regard to priority categories, the pertinent section of the MPM states:

3.4.A. PRIORITY CATEGORIES

Applicants will be placed on a waiting list by priority category and then chronologically by date of request of services. Enrollment in MI Choice is assigned on a first-come/first-served basis using the following categories, listed in order of priority given.

Waiver agencies are required to conduct follow-up phone calls to all applicants on their waiting list. The calls are to determine the applicant's status, offer assistance in accessing alternative services, identify applicants who should be removed from the list, and identify applicants who might be in crisis or at imminent risk of admission to a nursing facility. Each applicant on the waiting list is to be contacted at least once every 90 days. Applicants in crisis or at risk require more frequent contacts. Each waiver agency is required to maintain a record of these follow-up contacts.

3.4.A.1. CHILDREN'S SPECIAL HEALTH CARE SERVICES (CSHCS) AGE EXPIRATIONS

This category includes only those applicants who continue to require Private Duty Nursing services at the time such coverage ends due to age restrictions under CSHCS.

3.4.A.2. NURSING FACILITY TRANSITIONS

Nursing facility residents who desire to transition to the community and will otherwise meet enrollment requirements for MI Choice qualify for this priority status and are eligible to receive assistance with supports coordination, transition activities, and transition costs. Priority status is not given to applicants whose service and support needs can be fully met by existing State Plan services.

3.4.A.3. ADULT PROTECTIVE SERVICES (APS) AND DIVERSIONS

An applicant with an active Adult Protective Services (APS) case is given priority when critical needs can be addressed by MI Choice services. It is not expected that MI Choice waiver agencies solicit APS cases, but priority is given when necessary.

An applicant is eligible for diversion priority if they are living in the community or are being released from an acute care setting and are found to be at imminent risk of nursing facility admission. Imminent risk of placement in a nursing facility is determined using the Imminent Risk Assessment (IRA), an evaluation developed by MDHHS. Use of the IRA is essential in providing an objective differentiation between those applicants at risk of a nursing facility placement and those at imminent risk of such a placement. Only applicants found to meet the standard of imminent risk are given priority status on the waiting list. Applicants may request that a subsequent IRA be performed upon a change of condition or circumstance.

Supports coordinators must administer the IRA in person. The design of the tool makes telephone contact insufficient to make a valid determination. Waiver agencies must submit a request for diversion status for an applicant to MDHHS. A final approval of a diversion request is made by MDHHS.

3.4.A.4. CHRONOLOGICAL ORDER BY SERVICE REQUEST DATE

This category includes applicants who do not meet any of the above priority categories or for whom prioritizing information is not known. As stated, applicants will be placed on the waiting list in the chronological order that they requested services as documented by the date of MI Choice Intake Guidelines completion or initial nursing facility introductory meeting.

*MPM, July 1, 2015 version
MI Choice Waiver Chapter, pp. 8-9*

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Here, the Intake Specialist testified that the Waiver Agency was at capacity for MI Choice Waiver enrollees at all times relevant to this case. Pursuant to the above policy, it therefore maintains a waiting list and contacts individuals on the list on a priority and first come, first served, basis when sufficient resources become available to serve additional individuals. Accordingly, when Appellant was determined to be potentially eligible for the program from the telephone intake screening based on her score as Level D, she was placed on the waiting list. Moreover, while no imminent risk assessment was performed, it does not appear that one was necessary and that Appellant did not qualify for that higher priority level, or any other priority level, given the information provided during the intake, Appellant's request for hearing, and during the hearing itself as Appellant did not dispute the information recorded during the intake and relied upon by the Waiver Agency.

However, the Intake Specialist testified that Appellant was removed from the waiting list on [REDACTED], due to the Waiver Agency being unable to contact/locate Appellant. The Intake Specialist testified that calls were made to Appellant on [REDACTED]. The Waiver Agency was only able to leave a voice mail on [REDACTED]. Additionally, the Intake Specialist testified that a letter was mailed out [REDACTED], letting Appellant know she would be removed from the waiting list.

Appellant argued that the Waiver Agency did not respond to the call backs from Appellant's daughter. However, this testimony was unsupported. There was no specific information, such as the dates for the alleged calls or names of who the messages were left for; there was no testimony or sworn statement from the individual who made these alleged calls; and the Intake Specialist testified the Wavier Agency has no record of these calls/messages.

In summary, the Waiver Agency properly placed Appellant on the waiting list pursuant to the Department's policy. Further, there was sufficient credible evidence that the Waiver Agency followed Department policy in removing Appellant from the wait list, such as the specific dates calls were made and whether messages could be left as well as the date a letter was sent to Appellant, which was 12 days prior to the date Appellant was removed from the wait list.

[REDACTED]
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The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver Agency properly placed Appellant on its waiting list and that it followed Department policy in removing Appellant from the wait list.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is **AFFIRMED**.

Colleen Lack

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

Date Mailed: [REDACTED]

CL/cg

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.