



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 10, 2017
MAHS Docket No.: 16-016380
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

After due notice, a hearing was held on 1/5/17. Petitioner did not appear. Petitioner was represented by [REDACTED], Hearings Representative, Guardian, and daughter, who also testified on behalf of Petitioner.

[REDACTED] Resource Specialist, appeared on behalf of [REDACTED], Michigan, the Waiver Agency/subcontractor with the Michigan Department of Community Health.

ISSUE

Did the Department's MI Choice Waiver Agency properly place Petitioner on the wait 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. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Testimony).
2. On [REDACTED], the Petitioner contacted the Waiver Agency to request MI Choice Waiver services. The Waiver Agency conducted a screening using the new MI Choice Intake Guidelines and determined that the Petitioner passed the MI Choice Intake Guidelines. (Exhibit A).

3. On [REDACTED], the Waiver Agency notified Petitioner in writing that the MI Choice Waiver program was currently at capacity and the Petitioner could not be evaluated for enrollment at that time. Petitioner was placed on the MI Choice Wait list. The written notification informed Petitioner of his rights to a fair hearing. (Exhibit A.).
4. The Agency conducted an Imminent Risk Assessment (IRA) evaluation and determined that Petitioner was not in a crisis situation. (Testimony).
5. On [REDACTED] MAHS received the Petitioner's request for an Administrative Hearing. (Exhibit 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 (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 Petitioner 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*, July 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).

On July 1, 2014 the Michigan Department of Community Health Medical Services Administration issued MSA Bulletin Number: MSA 14-27 to notify providers of the new telephonic screening tool to be used for the MI Choice Waiver program effective August 1, 2014 named the MI Choice Intake Guidelines. MSA 14-27 states in part:

New MI Choice Intake Guidelines

The Michigan Department of Community Health (MDCH) specifically formulated a more accurate telephonic evaluation for MI Choice applicants to determine potential program eligibility and waiting list placement. The

new telephonic evaluation, named the MI Choice Intake Guidelines, is for use by the MI Choice program only. The MI Choice Intake Guidelines document does not, in itself, establish program eligibility. It is not intended to be used for any other purpose within the MI Choice program, nor for any other Medicaid program. A properly completed MI Choice Intake Guidelines document is required prior to placement on the MI Choice waiting list.

MI Choice waiver agencies must collect MI Choice Intake Guidelines data electronically using COMPASS, which is an online program developed by the Center for Information Management. Additional questions not included in the MI Choice Intake Guidelines may be asked for clarification. The online MI Choice Intake Guidelines is the only approved format and is only accessible to MI Choice waiver agencies. The LOCD TIG is no longer acceptable for use by the MI Choice program in determining potential program eligibility or waiting list placement. Any hard copy LOCD TIG performed before the effective date of this bulletin must be retained for the minimum period of six years.

The premise for completing the MI Choice Intake Guidelines online is that it is scored using a complex algorithm that is most efficiently applied with the COMPASS program. 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. (Exhibit A, pp.15-16).

The *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2014, pp. 5-8, outlines the policy regarding the MI Choice waiting list policy:

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.

Capacity is not determined by an allocated number of program slots. While numbers of slots must be monitored for federal reporting purposes, waiver agencies are expected to enroll any applicant for whom they have resources to serve.

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.

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 MDCH. 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 MDCH. A final approval of a diversion request is made by MDCH.

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 TIG completion or initial nursing facility interview.

In this case, evidence shows that Petitioner was placed on the wait list by chronological order by service request date pursuant to policy found in the MPM cited above. Petitioner requested a hearing to dispute placement requesting immediate services.

As already noted, there was no evidence that Petitioner met an exception to be given priority.

The purview of an Administrative Law Judge (ALJ) is to review the action taken by the Waiver Agency and to make a determination if that action is correct under policy and procedure and not contrary to law. After a careful review of the credible and substantial evidence of record, this ALJ finds no evidence of a priority exception and thus, the decision of the Waiver Agency must be upheld based on the available evidence.

It is noted that subsequent to the action and the hearing request filed herein, Petitioner was admitted to a nursing home. Petitioner is aware that she may be eligible for MI Choice services if she transitions to an assistive living situation, or back home.

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 placed Petitioner on the MI Choice wait list, and,

IT IS THEREFORE ORDERED that:

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

JS/cg



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Community Health Rep

[REDACTED]

Petitioner

[REDACTED]