



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 18, 2017  
MAHS Docket No.: 16-016566  
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 42 CFR 431.200 et seq. upon the Petitioner's request for a hearing.

After due notice, a hearing was held on January 10, 2017. Petitioner was represented by [REDACTED] appeared as a witness.

[REDACTED], Assistant Director, represented the [REDACTED], subcontractor with the Respondent the Michigan Department of Health and Human Services. [REDACTED] Program Director, and [REDACTED], Intake Specialist appeared as witnesses.

**ISSUE**

Did the Waiver Agency properly place Petitioner on a 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. The Respondent Agency subcontracts with the Department to provide MI Choice Waiver services to eligible beneficiaries.
2. The Agency implements the MI Choice Waiver program in accordance with Michigan's Waiver Agreement, Department policy and its contract with the Department.

3. Petitioner is an [REDACTED] year-old female who indicated on the MI Choice Fact Sheet under the Medicaid box "No Insurance." (Exhibit a.3).
4. On [REDACTED] a referral was made on behalf on Petitioner, and on [REDACTED] an Intake Specialist from the Agency conducted a telephone screen with Petitioner, completing the Fact Sheet. (Exhibit A.1).
5. On [REDACTED] the [REDACTED] Intake Specialist completed the Waiver Pre-screen and placed Petitioner at a priority level 4, and issued a wait list letter and appeal form. (Exhibit A.1).
6. Due to financial caps on the wait list, the wait may be a year or more. (Testimony).
7. On [REDACTED] Petitioner filed a hearing request with the Michigan Administrative Hearing System. (Exhibit A.1)
8. On [REDACTED] the Respondent documented that multiple calls were made to the designated contact person, as Petitioner does not speak English, in order to set up an appointment for an Imminent Risk Assessment (IRA), and to potentially move Petitioner up on the wait list. Calls were made [REDACTED] and [REDACTED]. At each call the Respondent left message asking for a return call; as of [REDACTED] no responses at all were made to the Respondent. (Exhibit A.2; Testimony).
9. At hearing, Petitioner's representative indicated that Petitioner moved to Ann Arbor.

### 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 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)*

The *Medicaid Provider Manual, MI Choice Waive Chapter*, April 1, 2014, pp. 6-8, applicable to the facts herein, states in part:

### **3.2 TELEPHONE INTAKE GUIDELINES**

The Telephone Intake Guidelines (TIG) 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 TIG does not, in itself, establish program eligibility. Use of the TIG 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. The date of the TIG contact establishes the chronological placement of the applicant on the waiting list. The TIG may be found on the MDCH website. (Refer to the Directory Appendix for website guidelines.)

Applicants who request services in MI Choice must be screened by telephone using the TIG at the time of their request.

The TIG is the only recognized tool accepted for telephonic screening of MI Choice applicants.

### **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.

The Waiver Agency witness testified that the MI Choice Waiver Program is at capacity for MI Choice Waiver enrollees. The Waiver Agency witness said that from the telephone intake it appeared that Petitioner was eligible for assessment for the MI Choice Waiver Program, but that Petitioner was placed on the waiting list because the Program was at capacity. The Waiver Agency 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.

The Respondent also indicated that Petitioner scored at a level 4. Subsequent to the scoring, the Respondent attempted to contact Petitioner in order to make a determination as to moving her forward on the list but to no avail, as each time, a message was left without a return call.

Petitioner representative testified that Petitioner needs services, and that the Petitioner spends some time in [REDACTED], and some time in [REDACTED]. However, as the case stands as Petitioner has failed to get in touch with the Respondent for an IRA, Petitioner's eligibility is based on the chronological order of the Wait List; MI Choice is not an entitlement program as Medicaid. Rather, federal and state law limits the number of cases based on financial resources.

The Waiver Agency and this Administrative Law Judge are bound by the MI Choice Program policy.

The Waiver Agency provided sufficient evidence that it implemented the MI Choice waiting list procedure in accordance with Department policy; therefore, its actions were proper.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly processed Petitioner's request through its intake and properly placed Petitioner on the MI Choice Waiver program wait list based on the available information.

**IT IS THEREFORE ORDERED** that:

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

JS/cg



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**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]

**DHHS -Dept Contact**

[REDACTED]

**DHHS-Location Contact**

[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]

**Community Health Rep**

[REDACTED]

**Petitioner**

[REDACTED]