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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: March 31, 2017
MAHS Docket No.: 17-000485
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 March 2, 2017. [REDACTED], the Petitioner, appeared on her own behalf. [REDACTED], Intake Specialist, represented the Respondent Department of Health and Human Services' Waiver Agency, The Senior Alliance ("Waiver Agency").

During the hearing proceeding, the Waiver Agency's hearing summary packet was admitted as Exhibit A, pp. 1-26.

ISSUE

Did the Waiver Agency properly determine that Petitioner was not eligible for MI Choice Waiver services because the Petitioner did not meet the MI Choice Intake Guidelines (MIG) criteria?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Respondent 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 [REDACTED], Petitioner contacted the Waiver Agency for MI Choice Waiver services and a telephone screening was completed. Petitioner was found to not meet the MIG criteria. (Exhibit A, pp. 1-12; Intake Specialist Testimony)

3. On [REDACTED], an Adequate Action Notice was issued to Petitioner indicating she was not eligible for the MI Choice Waiver program based on the MIG. (Exhibit A, p. 13)
4. On [REDACTED], Petitioner's hearing request was received by the Michigan Administrative Hearing System. (Hearing Request)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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.

Petitioner 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 Respondent, 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:

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.

*MPM, January 1, 2017, version
MI Choice Waiver Chapter, pages 5-6
(Underline added by ALJ)*

The MPM policy further requires that an individual meet the Michigan Medicaid Nursing Facility Level of Care Determination to be meet the functional eligibility criteria for the MI Choice Waiver program. *MPM, January 1, 2017, version, MI Choice Waiver Chapter, pages 1-2.* The Intake Specialist confirmed that some of the questions on the MIG are screening to see if the individual will end up meeting the nursing facility level of care criteria. (Intake Specialist Testimony)

In this case, Petitioner scored as Level B on the MIG. (Exhibit A, p. 10) Accordingly, the Waiver Agency determined that Petitioner did not meet the MIG criteria. Under the above cited MPM policy, individuals who score as Level C, Level D, Level D1 or Level E are those applicants determined potentially eligible for program enrollment. Therefore, on [REDACTED], an Adequate Action Notice was issued to Petitioner indicating she was not eligible for the MI Choice Waiver program based on the MIG screening. (Exhibit A, p. 13)

Petitioner did not contest that she did not meet the MIG criteria. Further, Petitioner agrees that she is not quite ready for nursing facility level of care. (Petitioner Testimony)

Overall, the evidence supports the Waiver Agency's determination that Petitioner was not potentially eligible for MI Choice Waiver services. Petitioner did not meet the MIG criteria. Further, Petitioner's testimony acknowledged that she also would not meet the criteria for nursing facility level of care.


DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined that Petitioner was not eligible for MI Choice Waiver services because the Petitioner did not meet the MI Choice Intake Guidelines (MIG) criteria.

IT IS THEREFORE ORDERED that

The Waiver Agency's decision is AFFIRMED.

CL/cg



Colleen Lack
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]

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]