



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: July 13, 2021  
MOAHR Docket No.: 21-002802  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Steven Kibit**

### **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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on July 8, 2021. [REDACTED], Petitioner's daughter, appeared and testified on Petitioner's behalf. Krystn Hartner, Intake and Waitlist Supervisor, appeared and testified on behalf of the Respondent Area Agency on Aging 1-B.

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-42. Petitioner did not submit any proposed exhibits.

### **ISSUE**

Did the Respondent 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. Respondent is a contract agent of the MDHHS and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. On May 28, 2021, Petitioner and his representative applied for waiver services for Petitioner through Respondent and a telephone intake was completed. (Exhibit A, pages 34-41).

3. During the intake assessment, Petitioner was determined to be potentially eligible for the waiver program after being scored as a Level D. (Exhibit A, page 40).
4. However, while found to be potentially eligible, Petitioner was placed on a waiting list due to a lack of available slots in the program. (Exhibit A, page 40; Testimony of Respondent's representative).
5. That same day, Respondent also sent Petitioner written notice that he had been placed on the waiting list. (Exhibit A, page 31).
6. On June 14, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter. (Exhibit A, pages 7-9).
7. While Petitioner has been on the waiting list, Respondent has been assisting Petitioner in applying for Medicaid. (Exhibit A, page 42; Testimony of Petitioner's representative; Testimony of Respondent's representative).
8. Petitioner has not been approved for Medicaid yet. (Testimony of Petitioner's representative; Testimony of Respondent's representative).

### **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.

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 and the MI Choice waiting list policies:

### **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 waiver 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 waiver agency's 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 will 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, the waiver agency must use the applicant's preferred means of communication. 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 waiting list if it is anticipated that the applicant will become financially eligible within 60 days.*

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, April 1, 2021 version  
MI Choice Waiver Chapter, page 6  
(italics added for emphasis)*

Here, Respondent's representative testified that it was at capacity for MI Choice Waiver enrollees at the time of the decision at issue in this case and that it therefore placed

Petitioner on its waiting list in chronological order pursuant to the above policies. She also noted that Petitioner has not yet been determined eligible for Medicaid and, while Respondent is assisting him with his Medicaid application, he must remain on the waiting list until he is found financially eligible.

In response, Petitioner's representative testified that Petitioner needs assistance and that they are looking to have Petitioner's representative reimbursed for providing that necessary care. She also agreed that Respondent is assisting Petitioner in applying for Medicaid.<sup>1</sup>

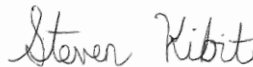
Given the above policies and record, the undersigned Administrative Law Judge finds that Respondent's actions must be affirmed. Pursuant to the above policies, Respondent maintains a waiting list when it is at capacity and it contacts individuals on the list on a priority and first come, first served, basis when sufficient resources became available to serve additional individuals. Moreover, 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 waiting list if it is anticipated that the applicant will become financially eligible within 60 days. Accordingly, while Petitioner appears to be functionally eligible for the program, he was properly placed on the waiting list given Respondent's capacity at the time and the fact that Petitioner has not yet been determined financially eligible for Medicaid or the waiver program.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly placed Petitioner on a waiting list for the MI Choice Waiver Program.

**IT IS THEREFORE ORDERED** that

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



SK/sb

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**Steven Kibit**  
Administrative Law Judge

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<sup>1</sup> Despite an application for Home Help Services (HHS) being attached as part of the request for hearing, Petitioner's representative did not know anything about that program. The undersigned Administrative Law Judge subsequently noted that HHS are provided through a separate program through the Department of Health and Human Services (DHHS), and that any application for such services is beyond the scope of this proceeding.

**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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

**DHHS Department Rep.**

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**Community Health Rep**

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**Petitioner**

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