[redacted]

Date Mailed: December 7, 2022
MOAHR Docket No.: 22-004969
Agency No.: 0
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq*. and 42 CFR 438.400 *et seq*. upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on December 6, 2022. [redacted], Petitioner's stepdaughter, and Authorized Hearing Representative appeared and testified on Petitioner's behalf. Petitioner also appeared but did not testify.

Kirsten Laing, Project Manager, appeared and testified on behalf of the Department's Waiver Agency, Tri-County Office on Aging. (Waiver Agency). Jennifer Fritz, Intake Specialist, appeared as a witness.

ISSUE

Did the Waiver Agency properly deny Petitioner services because she did not meet the MI Choice Intake Guidelines (MIG)?

FINDINGS OF FACT

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

1. Petitioner was referred to the Waiver Agency for screening on July 15, 2022. (Exhibit A, p 1; Testimony).

2. On July 20, 2022, the Waiver Agency conducted a telephone screening using the MI Choice Intake Guidelines with Petitioner's stepdaughter. Following the screening, the Waiver Agency determined that Petitioner scored a B (homemaker services) and was, therefore, not eligible for the waiver program based on answers to the intake questions. (Exhibit A, pp 2-14; Testimony).

3. On July 20, 2022, the Waiver Agency notified Petitioner both verbally and in writing that the request for services was denied as it did not appear that she met any of the eligibility categories for services. (Exhibit A, p 15; Testimony).

4. On October 31, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's Request for 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. 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 to the Michigan Department of Health and Human Services. Regional agencies, in this case AAA, 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 governing policy for the MI Choice Waiver program and, with respect to functional eligibility and the intake process for the program, the applicable version of the MPM states in part:

> **2.2 FUNCTIONAL ELIGIBILITY**
>
> The MI Choice waiver agency must verify an applicant's medical/functional eligibility for program enrollment by inputting a valid Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) into the online LOCD application. A valid LOCD is defined as an LOCD that was completed in-person with the applicant according to MDCH policy and put in the online LOCD application within 14 calendar days after the date of enrollment into

the MI Choice program. (Refer to the Directory Appendix for website information.) The LOCD is discussed in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter. Additional information can be found in the Nursing Facility Coverages Chapter and is applicable to MI Choice applicants and participants.

The applicant must also demonstrate a continuing need for and use of at least two covered MI Choice services, one of which must be Supports Coordination. This need is originally established through the Initial Assessment using the process outlined in the Need for MI Choice Services subsection of this chapter.

* * *

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 MDCH 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.
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> 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 department's contracted vendor.
>
> *Medicaid Provider Manual*
> *MI Choice Waiver Chapter*
> *July 1, 2022, pp 1, 5-6*

Here, Respondent conducted an intake using the required MI Choice Intake Guidelines and, based on the answers Petitioner's representative gave during the intake, she scored as a Level B. Given this level, the Waiver Agency determined that Petitioner was ineligible for waiver services per policy and, as required, it issued an adverse action notice advising Petitioner of her right to appeal that determination. The Waiver Agency did place Petitioner on the waiting list for homemaker services.

Petitioner subsequently filed an appeal regarding the denial of services and, in doing so, bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in denying her request for services. Moreover, this Administrative Law

Judge is limited to reviewing the Waiver Agency's decision in light of the information it had at the time it made that decision.

Petitioner's stepdaughter testified that Petitioner and her father moved to the Lansing area on July 2, 2022 and, at the time she called in for the screening on July 20, 2022, she did not understand the extent of Petitioner's needs because they were more focused on her father's needs. Petitioner's stepdaughter indicated that Petitioner did not answer all the questions during the screening truthfully and it would have been better if the Waiver Agency could have come out and screened Petitioner personally. Petitioner's stepdaughter testified that Petitioner has chronic back pain and was recently prescribed a wheelchair because she can only walk short distances with her walker. Petitioner's stepdaughter indicated that Petitioner has difficulty seeing and hearing and suffers from COPD, coronary artery disease, atherosclerotic disease, macular degeneration, depression, and thyroid deficiency. Petitioner's stepdaughter testified that Petitioner cannot cook by herself, cannot take her medications by herself, and cannot shower by herself.

In this case it appears that the Waiver Agency accurately recorded what was reported on Petitioner's behalf and based on those reports, Petitioner did not meet the criteria for services at that time. Apparently, that report may not have been entirely accurate, but the Waiver Agency, and this Administrative Law Judge, can only base a decision on the information reported at the time of the screening. Accordingly, based on the available information, the Waiver Agency's decision must be affirmed. However, as indicated at the hearing, since Petitioner may not have provided accurate information at the screening, she can and should request another screening immediately.

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 denied Petitioner's request for services.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is AFFIRMED.

RM/sj

Robert J. Meade
Administrative Law Judge

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

Via Electronic Mail:

DHHS Department Representative
Heather Hill
400 S. Pine 5th Floor
Lansing, MI 48933
HillH3@michigan.gov

Community Health Rep
Kirsten L Laing, LMSW
Tri-County Office on Aging
Lansing, MI 48911
LaingK@tcoa.org

DHHS Department Contact
Elizabeth Gallagher
400 S. Pine 5th Floor
Lansing, MI 48909
Gallaghere@michigan.gov

Via First Class Mail:

Petitioner
[redacted]

Authorized Hearing Representative
[redacted]