

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

MI

Date Mailed: July 29, 2020
MOAHR Docket No.: 20-002820
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on July 28, 2020. [REDACTED], Petitioner, appeared on her own behalf. Sandra Landskroener, Intake Specialist, appeared on behalf of the Respondent, Senior Alliance (Department). Yazmin Dominguez, Supports Specialist, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary ¹

ISSUE

Did the Department's Waiver Agency properly deny Petitioner's request for MI Choice Waiver services?

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 of Health and Human Services contracts with the Department to provide MI Choice Waiver services to eligible beneficiaries.
2. On February 19, 2020, Petitioner contacted Department and requested MI-Choice Waiver services. (Exhibit A, p 2; Testimony).

¹ Petitioner indicated she did not receive a copy of the exhibit but wished to proceed in the absence of reviewing it.

3. On February 19, 2020, the Department conducted a telephone screening with Petitioner. Based upon the Petitioner's answers, the Department determined the Petitioner was ineligible for services as the Petitioner scored a B – Indicator of Homemaking services. (Exhibit A, pp 3-11; Testimony).
4. At the time of the telephone screening, Petitioner was able to perform many things independently. (Testimony).
5. On February 19, 2020, the Department sent Petitioner an Adequate Action Notice. The notice indicated the Petitioner was not eligible for the MI Choice Waiver Program. (Exhibit A, p 12; Testimony).
6. On May 5, 2020, the Michigan Office of Administrative Hearings and Rules received the Petitioner's request for an Administrative Hearing. (See Administrative Record).
7. After February 19, 2020, Petitioner's circumstances changed, and her daughter was no longer able to assist her. (Testimony).

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.²

The policy regarding enrollment in the MI Choice Waiver program is contained in the

² 42 CFR 430.25(b).

Medicaid Provider Manual, MI Choice Waiver, January 1, 2020, 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.2, 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.

The Waiver Agency provided reliable evidence that on February 19, 2020, the Petitioner contacted the Department to request MI Choice Waiver services. The Department conducted a telephone screening using the MI Choice Intake Guidelines. Petitioner was determined ineligible at B – Indicator of Homemaker services and thereafter the Petitioner was sent an Adequate Action Notice indicating the Petitioner did not qualify for the MI Choice Waiver program.

The Petitioner bears the burden of proving, by a preponderance of evidence that the Waiver Agency improperly denied her enrollment in the MI Choice Waiver program based upon the information the Waiver Agency received at the time of the telephone screening on February 19, 2020. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver Agency acted in accordance with the policy contained in MSA 14-27, and its actions were proper when it

denied the Petitioner enrollment in the MI Choice program. Petitioner was screened using the MI Choice Intake Guidelines, but did not score as Level C, Level D, Level D1 or Level E to be determined potentially eligible for program enrollment and to be placed on the MI Choice waiting list.

The policy in the MSA Bulletin makes it clear that an individual cannot be placed on the wait list to be considered for the MI Choice Waiver Program unless the individual passes the screening requirements on the MI Choice Intake Guidelines. The preponderance of the evidence demonstrates that the Petitioner did not pass the screening requirements on the MI Choice Intake Guidelines. The testimony provided does not rebut the Department's evidence showing ineligibility at the time of the screening. Accordingly, the Petitioner has failed to prove the Waiver Agency's actions were not proper when it denied her further consideration for the MI Choice program.³

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 MI Choice Waiver services.

IT IS THEREFORE ORDERED that:

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

CA/sb

Corey Arendt
Corey Arendt
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

³ The testimony provided by Petitioner indicated her circumstances may have changed since the denial notice. As a result, Petitioner was encouraged to contact Senior Alliance at (734) 722-2830 and make a request for a MI Choice Waiver screening.

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.

Heather Hill
400 S. Pine 5th Floor
Lansing, MI 48933

DHHS -Dept Contact

Brian Barrie
CCC 7th Floor
Lansing, MI 48919

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

DHHS -Dept Contact

Elizabeth Gallagher
400 S. Pine 5th Floor
Lansing, MI 48909

Community Health Rep

Gail Wejrowski
The Senior Alliance
5454 Venoy Road
Wayne, MI 48184