



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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██████████ MI 4 ██████████

Date Mailed: August 26, 2020  
MOAHR Docket No.: 20-003599  
Agency No.: ██████████  
Petitioner: ████████████████████

**ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm**

**DECISION AND ORDER**

On May 27, 2020, Petitioner, Wanda Whitener, requested a hearing to dispute a decision to deny her request for services through the MI Choice waiver program. This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on August 25, 2020. Petitioner's authorized hearing representative, ██████████, appeared on Petitioner's behalf. Respondent, Area Agency on Aging, had Jessica Rottmann, Intake and Waitlist Supervisor, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 21-page packet of documents provided by Respondent was admitted collectively as Exhibit A.

**ISSUE**

Did Respondent properly deny Petitioner placement on its waiting list based on the MI Choice intake guidelines?

**FINDINGS OF FACT**

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

1. On April 6, 2020, Petitioner's son, ██████████, completed a telephone assessment with Respondent to assess whether Petitioner would be eligible for services through the MI Choice waiver program.
2. During the assessment, Petitioner's son answered a series of questions about Petitioner, and Respondent completed a questionnaire based on his responses.

3. Based on the information Respondent obtained at the assessment, Petitioner scored a Level B on the MI Choice intake guidelines.
4. Respondent determined that Petitioner was not eligible for services through the MI Choice waiver program based on a Level B score.
5. Respondent advised Petitioner's son that Petitioner would not be put on its waiting list.
6. On May 27, 2020, Petitioner requested a hearing to dispute Respondent's decision.

### **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.

MI Choice is the Department of Health and Human Services' program to deliver home and community-based services for elderly and disabled individuals who meet the Michigan nursing facility level of care criteria that supports long-term care provided in a nursing facility. MI Choice is a waiver program approved by the Centers for Medicare and Medicaid Services (CMS) under Sections 1915(b) and 1915(c) of the Social Security Act. *MDHHS Medicaid Provider Manual* (April 1, 2020), MI Choice Waiver Chapter, Section 1, p. 1. The Department of Health and Human Services contracts with entities to administer the waiver program throughout the state. *Id.* at Section 7, p. 31. These entities operate as Prepaid Ambulatory Health Plans (PHAPs), and they are known as waiver agencies. *Id.* Respondent is the waiver agency in this case.

In order to be eligible for services through MI Choice, an individual must meet the functional eligibility requirements through a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). *Id.* at Section 2, p. 2. A waiver agency uses the MI Choice intake guidelines as an initial tool to determine whether an individual would likely meet the functional requirements through an LOCD. The MI Choice intake guidelines is a list of questions designed to screen applicants for eligibility and further assessment. *Id.* at Section 3, p. 6. An algorithm scores an individual based on the information gathered through the MI Choice intake guidelines. 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. *Id.*

In this case, Petitioner's son answered questions for Respondent so that Respondent could assess whether Petitioner would likely meet the functional requirements through an LOCD. Based on the information Petitioner's son provided, Respondent determined that Petitioner's score on the MI Choice intake guidelines was a Level B. Since

Petitioner's score was a Level B, Respondent determined that Petitioner was not potentially eligible for program enrollment, and Respondent determined that Petitioner should not be placed on its waiting list.

Petitioner is disputing Respondent's decision to not put Petitioner on its waiting list. Petitioner bears the burden to prove that Respondent did not act properly when it decided to not put Petitioner on its waiting list. Petitioner has not met her burden. Petitioner admitted that Respondent accurately recorded the information provided during the assessment, and Petitioner did not present any evidence to establish that Respondent did not properly determine Petitioner's score based on that information.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner placement on its waiting list based on the MI Choice intake guidelines.

IT IS ORDERED that Respondent's decision is **AFFIRMED**.

JK/dh



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**Jeffrey Kemm**

Administrative Law Judge  
for Robert Gordon, 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 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

**Authorized Hearing Rep.**

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

**DHHS -Dept Contact**

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

**Community Health Rep**

Lori Smith  
Area Agency on Aging 1B  
29100 Northwestern Hwy Ste 400  
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**Petitioner**

[REDACTED]  
[REDACTED]  
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