

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

Date Mailed: December 18, 2020  
MOAHR Docket No.: 20-007038  
Agency No.: [REDACTED]  
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 hearing was held on December 17, 2020. [REDACTED], Petitioner's daughter, appeared and testified on Petitioner's behalf.

Jessica Rottmann, Intake and Waitlist Supervisor, appeared and testified on behalf of the Department's Waiver Agency, Area Agency on Aging 1-B. (Waiver Agency).

**ISSUE**

Did the Waiver Agency properly deny Petitioner placement on the Waiver Agency's waiting list 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 is a [REDACTED]-year-old female, born [REDACTED]. (Exhibit A, p 20; Testimony).
2. On October 29, 2020, Petitioner's representative contacted the Waiver Agency and a telephone screening was completed using the MI Choice Intake Guidelines. Following the screening, the Waiver Agency determined that Petitioner scored a B and was, therefore, not eligible for the waiver program based on answers to the intake questions. (Exhibit A, pp 20-28; Testimony).
3. On October 29, 2020, 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 19; Testimony).

4. On November 3, 2020, Petitioner's representative again contacted the Waiver Agency and asked for a second opinion screening. A second opinion screening was completed, but Petitioner again scored a B and was denied placement on the Waiver Agency's waiting list. (Exhibit A, p 29; Testimony)
5. On November 18, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's Request for Hearing. (Exhibit A, pp 9-14).

## **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.

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  
October 1, 2020, 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. A second screening confirmed the results of the first screening.

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 daughter testified that some of the answers on the screening did not match with the answers given during the screenings. For example, Petitioner's daughter indicated that the screening indicates that Petitioner is independent in preparing meals but that she does not prepare any meals at all. Petitioner's daughter testified that Petitioner has been losing weight and on a recent trip to the doctor's office, Petitioner had lost 7-10 pounds since the last visit. Petitioner's daughter testified that Petitioner is very forgetful because of dementia, that she does not drive or go anywhere, and does not clean her own apartment. Petitioner's daughter indicated that sometimes when she calls Petitioner, Petitioner is ready to go to bed at 3:00 in the afternoon. Petitioner's daughter testified that while Petitioner can physically bathe herself, she needs reminders to even shower in the first place. Petitioner's daughter indicated that Petitioner does have a bath chair as she is a fall risk and that Petitioner fell within the past couple of weeks. Petitioner's daughter also indicated that Petitioner is not independent with taking her medications as she forgets to take her medications, or she takes them all at once.

Petitioner's daughter testified that Petitioner uses a walker and uses the arms of chairs to get up and down. Petitioner's daughter indicated that Petitioner bruises very easily. Petitioner's daughter testified that Petitioner will often change the subject and not follow what is being said and can also get irate and angry for no reason. Petitioner's daughter also indicated that she had to take over Petitioner's finances because she was giving all her money to charity. Petitioner's daughter testified that Petitioner can dress herself but does not shower very often so rarely changes her clothes. Petitioner's daughter indicated that Petitioner needs some supervision to get her going in the morning and keep her on track, and eating, throughout the day. Petitioner's daughter testified that Petitioner now mostly drinks cans of Ensure and eats cooking and chips. Petitioner's daughter testified that she is worried Petitioner will wander off and not be able to find her way home.

In response, the Waiver Agency representative indicated that it appeared that Petitioner had declined even since the November 3, 2020 rescreening and that Petitioner's daughter should call in for another screening.

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. For example, while it was reported that Petitioner was not cooking

her own meals, it was reported that Petitioner was able to grab prepared foods and eat them on her own. Accordingly, based on the available information, the Waiver Agency's decision must be affirmed. However, as indicated, since Petitioner's condition has worsened since 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.



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RM/sb

**Robert J. Meade**  
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

**Authorized Hearing Rep.**

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

**DHHS -Dept Contact**

Brian Barrie  
CCC 7th Floor  
Lansing, MI  
48919

**DHHS -Dept Contact**

Elizabeth Gallagher  
400 S. Pine 5th Floor  
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**Community Health Rep**

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29100 Northwestern Hwy Ste 400  
Southfield, MI  
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**Petitioner**

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