

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: March 7, 2022  
MOAHR Docket No.: 22-000100  
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 upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 15, 2022. Petitioner appeared and testified on her own behalf. Krysten 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 1-27. Petitioner did not submit any proposed exhibits.

**ISSUE**

Did the Respondent 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. Respondent is a contract agent of the Michigan Department of Health and Human Services (MDHHS) and is responsible for waiver eligibility determinations and the provision of services through the MI Choice Waiver Program in its service area.
2. On May 12, 2021, Petitioner applied for waiver services through Respondent and a telephone intake screening was completed. (Exhibit A, pages 15-23).
3. Petitioner reported an income of \$2,370, but she was not enrolled in Medicaid at that time. (Exhibit A, page 22).

4. Respondent placed Petitioner on its waiting list and began to work with her to obtain active Medicaid. (Exhibit A, page 14; Testimony of Intake and Waitlist Supervisor).
5. Petitioner was subsequently found eligible for Medicaid. (Testimony of Petitioner; Testimony of Intake and Waitlist Supervisor).
6. On September 29, 2021, Respondent completed its assessment of Petitioner. (Testimony of Petitioner; Testimony of Intake and Waitlist Supervisor).
7. During that assessment, Petitioner provided updated financial information, including an increased income that appeared to place her income over the limit for the MI Choice Waiver Program. (Exhibit A, page 24; Testimony of Petitioner; Testimony of Intake and Waitlist Supervisor).
8. Respondent then forwarded Petitioner's financial information to MDHHS, who subsequently determined that Petitioner was financially ineligible for the waiver program. (Exhibit A, pages 24-25; Testimony of Intake and Waitlist Supervisor).
9. On October 6, 2021, Respondent sent Petitioner written notice that her request for MI Choice Waiver services was denied because she was over the income for the waiver program. (Exhibit A, pages 26-27).
10. On January 10, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding that denial. (Exhibit A, pages 6-9).

### **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 applicable criteria for the MI Choice Waiver Program and, with respect to eligibility for the program, states in part:

## **SECTION 2 – ELIGIBILITY**

The MI Choice program is available to persons who are either elderly (age 65 or older) or adults with disabilities aged 18 or older and meet the following eligibility criteria:

- An applicant must establish their financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- Must be categorically eligible for Medicaid as aged or disabled.
- 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 requires at least two waiver services, one of which must be Supports Coordination, and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met 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.

## 2.1 FINANCIAL ELIGIBILITY

Medicaid reimbursement for MI Choice services requires a determination of Medicaid financial eligibility for the applicant by MDHHS. As a provision of the waiver, MI Choice applicants benefit from an enhanced financial eligibility standard compared to basic Medicaid eligibility. Specifically, MI Choice is available to participants in the special home and community-based group under 42 CFR §435.217 with a special income level up to 300% of the Supplemental Security Income (SSI) Federal Benefit Rate. Medicaid eligibility rules stipulate that participants are not allowed to spend-down to the income limit to become financially eligible for MI Choice.

To initiate a financial eligibility determination, MI Choice waiver agencies must enter enrollment notifications electronically in the Community Health Automated Medicaid Processing System (CHAMPS). Once the electronic enrollment is completed in CHAMPS, the participant will be assigned an associated MI Choice Program Enrollment Type (PET) code. MI Choice waiver agencies must enter disenrollment notifications electronically in CHAMPS to notify MDHHS of participants who are no longer enrolled in MI Choice. Once an electronic disenrollment is completed in CHAMPS, the participant's PET code will end to reflect a disenrollment date. Proper recordkeeping requirements must be followed and reflected in the applicant's or participant's case record.

*MPM, July 1, 2021 version  
MI Choice Waiver Chapter, page 2*

Here, Respondent's representative testified that, at the time of the assessment in this case, Petitioner provided financial information that would place her income over the limit for the MI Choice Waiver Program; Respondent forwarded that information to MDHHS as required; MDHHS subsequently determined that Petitioner was financially ineligible for the waiver program; and Respondent therefore sent Petitioner written notice that her request for MI Choice Waiver services was denied.

In response, Petitioner agreed that Respondent correctly identified the income she reported, but she also testified that she was previously told that she met all requirements and that she was approved for Medicaid. Petitioner did not know who her Medicaid eligibility worker was and testified that she last spoke to someone at MDHHS over two years ago.

Given the above policies and record, the undersigned Administrative Law Judge finds that Respondent's actions must be affirmed. Per the above policies, beneficiaries are only eligible for the MI Choice Waiver Program if they meet all the applicable eligibility criteria, including financial eligibility requirements as determined by MDHHS, and the evidence in this case clearly demonstrates that Petitioner is financially ineligible for the program.

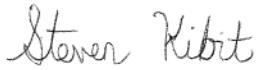
### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for MI Choice Waiver services.

**IT IS THEREFORE ORDERED** that

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

SK/tem

  
**Steven Kibit**  
Administrative Law Judge

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**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  
[HillH3@michigan.gov](mailto:HillH3@michigan.gov)

**Petitioner**

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

**DHHS -Dept Contact**

Elizabeth Gallagher  
400 S. Pine 5th Floor  
Lansing, MI 48909  
[Gallaghhere@michigan.gov](mailto:Gallaghhere@michigan.gov)

**Community Health Rep**

Lori Smith  
Area Agency on Aging 1B  
29100 Northwestern Hwy Ste 400  
Southfield, MI 48034  
[Lsmith@aaa1b.org](mailto:Lsmith@aaa1b.org)