



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: June 28, 2022  
MOAHR Docket No.: 22-001959  
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 upon the Appellant's request for a hearing.

After due notice, a hearing was held on June 22, 2022. Kevin Gilhool, Attorney, appeared on behalf of Petitioner. [REDACTED], Petitioner's Son and Power of Attorney, observed the proceeding. Monica Freier, Quality Director, appeared on behalf of Respondent, Area Agency on Aging Region 7 (Department). Rebecca LaLonde, Waiver Manager, appeared as a witness for Department. Peggy Goodrow, Waiver Manager, and Kristi Reiber, Quality Manager, observed the proceeding.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

**ISSUE**

Did the Department properly determine Petitioner was over the income limit 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. On December 22, 2021, the Department received a referral for Petitioner to be enrolled in their MI Choice Waiver program. (Exhibit A.)
2. On January 12, 2022, the Department completed an initial assessment of Petitioner and determined Petitioner met the medical criteria to qualify for the waiver program. (Exhibit A.)

3. On or around January 25, 2022, the Michigan Department of Health and Human Services (DHHS), informed the Department that Petitioner was approved for Medicaid with a spend down of \$[REDACTED] per month. Around this time, the Department asked DHHS if Petitioner was over the program income limit of \$[REDACTED] with a documented gross monthly income of \$[REDACTED] per month. (Exhibit A; Testimony.)
4. On February 3, 2022, DHHS spoke with the Department and confirmed Petitioner was over the income limit for the waiver program based on a social security income of \$[REDACTED] a VA Pension of \$[REDACTED], and a Pension of \$[REDACTED]. (Exhibit A; Testimony.)
5. On February 4, 2022, DHHS spoke again with the Department and confirmed Petitioner was over the income limit for the waiver program. (Exhibit A.)
6. On February 4, 2022, the Department sent Petitioner an Adequate Action Notice. The notice indicated the following:

After a thorough review of your financial documentation by Michigan Department of Health and Human Services, it has been determined that your income exceeds the limit to qualify for services through the MI Choice Waiver Program.<sup>1</sup>

7. On April 29, 2022, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (See Hearing File.)

### **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 applied for 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 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,

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<sup>1</sup> February 4, 2022, Adequate Action Notice, located in Petitioner's Request for Hearing received on April 29, 2022.

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.<sup>2</sup>

A waiver under section 1915(c) of the Social Security Act allows a State to include as “medical assistance” under its plan, home and community-based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF (Skilled Nursing Facility), ICF (Intermediate Care Facility), or ICF/MR (Intermediate Care Facility/Mentally Retarded).<sup>3</sup>

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Health and Human Services (DHHS) operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c).

The Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, with respect to “Financial Eligibility”, the applicable version of the MPM states in part:

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.<sup>4</sup>

The Department argued Petitioner’s documented income (SSI and VA Benefits) when totaled together exceeded the maximum amount permitted to be eligible for waiver services.

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<sup>2</sup> 42 CFR 430.25(b).

<sup>3</sup> 42 CFR 430.25(c)(2).

<sup>4</sup> Medicaid Provider Manual, MI Choice Waiver, April 1, 2022, p 2.

Petitioner argued the Department's decision was flawed and that the Department and DHHS erred when they included Petitioner's VA benefits as part of their calculations. Specifically, Petitioner pointed to 20 CFR §416.1103(a)(3) and (7).

Petitioner went on to indicate that, in this case, Petitioner was a wartime widow and the VA benefit was received only as a result of unusual medical expenses and that consequently, the totality of these VA payments should be excluded for eligibility determination purposes.

Having reviewed the facts and the arguments presented, I find sufficient evidence to question the determination made by the Department and DHHS. Consequently, the Department should reassess their decision and discuss with DHHS, 20 CFR §416.1103(a)(3) and (7) and render a new determination regarding Petitioner's eligibility for MI Choice waiver services.

### **DECISION AND ORDER**

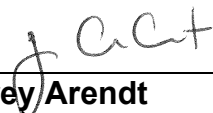
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's decision to deny services should be **reversed**.

**IT IS THEREFORE ORDERED** that:

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

The Department is further ordered to initiate the reprocessing of Petitioner's application for eligibility and discuss the financial eligibility issue with the Michigan Department of Health and Human Services and the application and applicability of 20 CFR §416.1103(a)(3) and (7).

CA/dh

  
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**Corey Arendt**  
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 Administrative Hearings and Rules.

**Via Electronic Mail:**

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**Community Health Rep**  
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**DHHS -Dept Contact**  
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**Via First Class Mail:**

**Authorized Hearing Rep.**

[REDACTED] MI [REDACTED]

**Petitioner**

[REDACTED] MI [REDACTED]