



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
ACTING DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: August 21, 2023  
MOAHR Docket No.: 23-003884  
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 August 17, 2023. [REDACTED] Petitioner's daughter, appeared on behalf of Petitioner. Deborah Nelson, Clinical Manager of Intake, appeared on behalf of Respondent, Area Agency on Aging 1B (Department).

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. Department 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 April 7, 2023, Petitioner applied for waiver services through Respondent and a telephone intake screening was completed. (Exhibit A).
3. On June 14, 2023, the Department received from DHHS an email indicating Petitioner had a spenddown of \$2,231 and further that Petitioner's income was not within the waiver limits as Petitioner had a combined pension and RSDI of [REDACTED] which was over the income limit. (Exhibit A; Testimony).
4. On June 14, 2023, the Department contacted Petitioner and informed them of the decision to remove Petitioner from the waitlist following the DHHS determination that Petitioner's income exceeded program limits and was, therefore, not financially eligible for the waiver program. (Exhibit A; Testimony).
5. On June 15, 2023, the Department sent Petitioner an Adequate Action Notice informing Petitioner of their removal from the waitlist and the reasons for the removal. (Exhibit A; Testimony).
6. On July 17, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.

### **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.<sup>1</sup>

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.

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<sup>1</sup> 42 CFR 430.25(b).

## 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.<sup>2</sup>

Here, the Department indicated the provided financial information placed Petitioner over the income limit for the MI Choice Waiver Program, and it was MDHHS who determined that Petitioner was financially ineligible for the waiver program; and Respondent, therefore, sent Petitioner written notice that the request for MI Choice Waiver services was denied.

In response, Petitioner did not directly dispute the income numbers used to determine eligibility but instead focused on arguments related to the policy and the fairness of those policies. Petitioner went on to ask for exceptions to be made to the policy and argued for a debt-to-income ratio to be used over the policy in place.

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

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<sup>2</sup> MPM, MI Choice Waiver, July 1, 2021, p 2.

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. Furthermore, I am bound by the policies and rules. I cannot make any changes to that policy or make any exceptions for any one person. Thus, my role is solely to determine whether the Department acted in accordance with the applicable laws and policies. And in this case, it is determined the Department has acted in accordance with those applicable laws and policies when they rendered the decision to remove Petitioner from the waitlist.

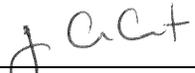
### **DECISION AND ORDER**

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

**IT IS, THEREFORE, ORDERED** that

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

CA/pe

  
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**Corey Arendt**  
Administrative Law Judge  
for Elizabeth Hertel, 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

**Via Electronic Mail:**

**Agency Representative**

Deborah Nelson  
Area Agency on Aging 1B  
29100 Northwestern Hwy.  
Southfield, MI 48034  
**Dnelson@aaa1b.org**

**Community Health Representative**

Lori Smith  
Area Agency on Aging 1B  
29100 Northwestern Hwy., Ste. 400  
Southfield, MI 48034  
**Lsmith@aaa1b.org**

**DHHS Department Representative**

Heather Hill  
MDHHS  
400 S. Pine, 5<sup>th</sup> Floor  
Lansing, MI 48933  
**HillH3@michigan.gov**

**DHHS Department Contact**

Elizabeth Gallagher  
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400 S. Pine, 5<sup>th</sup> Floor  
Lansing, MI 48933  
**Gallaghre@michigan.gov**

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]

**Authorized Hearing Representative**

[REDACTED]  
[REDACTED] MI [REDACTED]