



Date Mailed: March 13, 2025
Docket No.: 25-004468
Case No.: [REDACTED]
Petitioner: [REDACTED]

[REDACTED]
MI

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এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

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IN THE MATTER OF:

██████████,
Petitioner,

MOAHR Docket No.: 25-004468
Agency No.: 0
Case Type: ██████████

v

**AREA AGENCY ON AGING OF WESTERN
MICHIGAN,
Respondent.**

_____ /

**Issued and entered
this 13th day of March 2025
by: Corey A. Arendt
Administrative Law Judge**

DECISION AND ORDER

Following Petitioner’s request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held via telephone conference on March 11, 2025. ██████████ Petitioner’s Daughter, appeared on behalf of Petitioner. Stephanie Hecksel, Compliance and Quality Improvement Manager, appeared on behalf of Respondent, Area Agency on Aging Western (Department).

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Waiver Agency properly place Petitioner on a waiting list for the MI Choice Waiver Program?

FINDINGS OF FACT

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

1. The Michigan Department of Health and Human Services (DHHS) contracts with Waiver Agencies to provide MI Choice Waiver services to eligible beneficiaries. The Department is one of those Waiver Agencies. (Exhibit A; Testimony.)
2. Waiver Agencies must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, MDHHS policy, and its contract with the MDHHS. (Exhibit A; Testimony.)
3. On January 2, 2025, an Intake Specialist from the Department conducted a telephone screening with Petitioner, which showed that Petitioner was eligible for assessment for the MI Choice Waiver Program at a Level C. (Exhibit A; Testimony.)
4. On January 2, 2025, the Department sent Petitioner an Adequate Action Notice. The notice indicated the program was at capacity and Petitioner would be placed on a wait list for future enrollment. (Exhibit A; Testimony.)
5. On February 6, 2025, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A; Testimony.)

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 (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.

This Petitioner is claiming services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (formerly HCFA) to the Michigan Department of Health and Human Services (Department). Regional agencies 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.³

A Telephone Intake Guidelines screening for the MI Choice Waiver program was completed by the Department's Intake Specialist and it was determined that Petitioner passed the Telephone Intake Guidelines screening but did not meet imminent risk criteria, so Petitioner was then placed on the MI Choice Waiver wait list. Petitioner was sent an adequate action notice, i.e., a capacity notice, informing the Petitioner that she was placed on the wait list.

The Medicaid Provider Manual, MI Choice Waiver Chapter outlines the approved evaluation policy and the MI Choice waiting list policy:

3.2 MI CHOICE INTAKE GUIDELINES

The MI Choice Intake Guidelines (MIG) 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 MIG does not, in itself, establish program eligibility. A properly completed MIG is mandatory for MI Choice waiver agencies prior to placing applicants on a MI Choice waiting list when the waiver 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 waiver agency's MI Choice waiting list. The date of the MIG contact establishes the chronological placement of the applicant on the waiting list. The MIG may be found on the MDHHS 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 MIG 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 will either contact the applicant for whom services are being requested or complete the MIG 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, the waiver agency must use the applicant's preferred means of communication. It is acceptable to use an interpreter, a third-party in the

³ 42 CFR 430.25(b).

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 MIG, so long as the functional objectives of the MIG are met. (Refer to the Waiting Lists subsection of this chapter 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 MIG information may request a face-to-face evaluation using the LOCD 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 MIG or a face-to-face evaluation.

When an applicant appears to be functionally eligible based on the MIG but is not expected to meet the financial eligibility requirements, the MI Choice waiver agency must place the applicant on the waiting list if it is anticipated that the applicant will become financially eligible within 60 days.

The MIG 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 MDHHS contracted vendor.

3.3 ENROLLMENT CAPACITY

MI Choice capacity is limited to a maximum number of participants served at any point in the fiscal year as specified in the approved waiver application. Waiver agencies are allocated a specific number of slots each fiscal year and are

responsible for managing enrollment so as not to exceed the maximum number of participants served at any point in the fiscal year. MDHHS reserves the right to reallocate slots as necessary to best meet MI Choice program demands.

3.4 WAITING LISTS

Whenever the number of participants receiving services through MI Choice exceeds the existing program capacity, any screened applicant must be placed on the MI Choice waiting list. The waiting list must be actively maintained and managed by each MI Choice waiver agency. The enrollment process for the MI Choice program is not ever actually or constructively closed. The applicant's place on the waiting list is determined by priority category in the order described below. Within each category, an applicant is placed on the list in chronological order based on the date of their request for services. This is the only approved method of accessing waiver services when the waiver program is at capacity.

3.4.A. PRIORITY CATEGORIES

Applicants will be placed on the waiting list by priority category and then chronologically by date of request of services. Enrollment in MI Choice is assigned on a first-come/first-served basis using the following categories, listed in order of priority given.

Waiver agencies are required to conduct follow-up phone calls to all applicants on the waiting list. The calls are to determine the applicant's status, offer assistance in accessing alternative services, identify applicants who should be removed from the list, and identify applicants who might be in crisis or at imminent risk of admission to a nursing facility. Each applicant on the waiting list is to be contacted at least once every 90 days. Applicants in crisis or at risk require more frequent contacts. Each waiver agency is required to maintain a record of these follow-up contacts.

3.4.A.1. STATE PLAN PRIVATE DUTY NURSING AGE EXPIRATIONS

This category includes only those applicants who continue to require Private Duty Nursing services at the time such coverage ends due to age restrictions.

3.4.A.2. NURSING FACILITY TRANSITIONS

Nursing facility residents who desire to transition to the community and will otherwise meet enrollment requirements for MI Choice qualify for this priority status. Priority status is not given to applicants whose service and support needs can be fully met by existing State Plan services.

3.4.A.3. ADULT PROTECTIVE SERVICES (APS) AND DIVERSIONS

An applicant with an active Adult Protective Services (APS) case is given priority when critical needs can be addressed by MI Choice services. It is not expected that MI Choice waiver agencies solicit APS cases, but priority is given when necessary.

An applicant is eligible for diversion priority if they are living in the community or are being released from an acute care setting and are found to be at imminent risk of nursing facility admission. Imminent risk of placement in a nursing facility is determined using the Imminent Risk Assessment (IRA), an evaluation developed by MDHHS. Use of the IRA is essential in providing an objective differentiation between those applicants at risk of a nursing facility placement and those at imminent risk of such a placement. Only applicants found to meet the standard of imminent risk are given priority status on the waiting list. Applicants may request that a subsequent IRA be performed upon a change of condition or circumstance.

Supports coordinators must administer the IRA in person. The design of the tool makes telephone contact insufficient to make a valid determination. Waiver agencies must submit a request for diversion status for an applicant to MDHHS. (Refer to the Directory Appendix for details.) A final approval of a diversion request is made by MDHHS.

3.4.A.4. CHRONOLOGICAL ORDER BY SERVICE REQUEST DATE

This category includes applicants who do not meet any of the above priority categories or for whom prioritizing information is not known. As stated, applicants will be placed on the waiting list in the chronological order that they

requested services as documented by the date of MIG completion or the initial nursing facility introductory meeting.⁴

The Department witness testified that the MI Choice Waiver Program is at capacity for MI Choice Waiver enrollees. The Waiver Agency witness said that from the telephone intake it appeared that Petitioner was eligible for assessment for the MI Choice Waiver Program, but that Petitioner was placed on the waiting list because the Program was at capacity. The Waiver Agency witness indicated that the Waiver Agency maintains a waiting list and contacts individuals on the list on a priority and first come, first serve basis when sufficient resources become available to serve additional individuals. The witness went on to indicate Petitioner did not meet one of the higher priority categories and thus, was appropriately placed on the wait list in chronological order by service request date.

Petitioner argued there was a recent surgery; that Petitioner drags his foot and needs assistance getting in shower, getting dressed, and getting food. Petitioner also argued that the individual that was primarily providing care could not always be present to assist Petitioner, and that the other help was not always reliable.

The Department and this Administrative Law Judge are bound by the MI Choice Program policy. In addition, this Administrative Law Judge possesses no equitable jurisdiction to grant exceptions to Medicaid, Department, and MI Choice Program policy. The Department provided sufficient evidence that it implemented the MI Choice waiting list procedure in accordance with MDHHS policy; therefore, its actions were proper. Petitioner's recent surgical procedure does not automatically place Petitioner within one of the other priority categories.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied assessment of Petitioner and placed Petitioner on the wait list.

IT IS THEREFORE ORDERED that:

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



COREY A. ARENDT
ADMINISTRATIVE LAW JUDGE

⁴ Medicaid Provider Manual, MI Choice Waiver, January 1, 2025, pp 7-9.

APPEAL RIGHTS: Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at courts.michigan.gov. The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at <https://irs.michbar.org> or Michigan Legal Help at <https://michiganlegalhelp.org>. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to MOAHR-BSD-Support@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
Michigan Office of Administrative Hearings and Rules
Rehearing/Reconsideration Request
P.O. Box 30639
Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information, and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by first class mail at their respective addresses as disclosed below or electronic delivery as specified this 13th day of March 2025.

P. Ewalt

P. Ewalt
Secretary
Michigan Office of Administrative Hearings and Rules

Via Electronic Mail:

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