

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

\_\_\_\_\_ /

Docket No. 2009-33673 EDW  
Case No. ██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. ██████████ appeared as Authorized Representative for her mother, ██████████ (Appellant), who also appeared and testified on her own behalf.

██████████, Social Work Supervisor ██████████ Case Manager, and ██████████, Social Worker/Care Manager, appeared on behalf of ██████████, a MI Choice Waiver Agency contracted with the Michigan Department of Community Health (hereafter, 'Department').

**ISSUE**

Did the Department properly determine the Appellant no longer eligible for the MI Choice waiver?

**FINDINGS OF FACT**

Based upon the competent, material and substantial evidence presented, I find, as material fact:

1. The Appellant, a Medicaid beneficiary, has been a participant in the MI Choice Waiver program since ██████████. Current waiver services include homemaking and personal care. In addition, she receives snow removal in the winter months.

2. On ██████████ a re-assessment was completed by the waiver agency; the Appellant did not pass through any Level of Care Door. At that time, she was referred to the Department of Human Service's Adult Home Help program.
3. On ██████████, the Appellant was issued a Termination of Services letter.
4. On ██████████, the Appellant filed her request for hearing with the State Office of Administrative Hearings and Rules.

### **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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

The Medicaid Provider Manual, Coverages and Limitations Chapter, Nursing Facilities Section, April 1, 2005, lists the policy for admission and continued eligibility process as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MIChoice, and PACE services.

Section 4.1 of the Medicaid Provider Manual Nursing Facilities Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool (*Michigan Medicaid Nursing Facility Level of Care Determination, March 7, 2005, Pages 1 – 9 or LOC*). The LOC must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. All Medicaid beneficiaries who reside in a nursing facility on November 1, 2004, must undergo the evaluation process by their next annual MDS assessment date.

Nursing facilities, MIChoice, and PACE have multiple components for determining eligibility for services. The Medicaid Provider Manual Nursing Facilities Section and the *Nursing Facility Eligibility and Admission Process, November 1, 2004, Pages 1-7* explain the components that comprise the eligibility and admission process for nursing facility eligibility and admission. The LOC is the assessment tool to be utilized when determining eligibility for admission and continued Medicaid nursing facility coverage. There are five (5) necessary components for determining eligibility for Medicaid nursing facility reimbursement.

- Verification of Medicaid Eligibility
- Correct/timely Pre-Admission Screening/Annual Resident Review (PASARR)
- Physician Order for Nursing Facility Services
- Appropriate Placement based on Medicaid Nursing Facility Level of Care Determination
- Freedom of Choice.

*See MDCH Nursing Facility Eligibility and Admission Process, Page 1 of 7, 11/01/04.*

The Level of Care Assessment Tool consists of seven-service entry Doors. The doors are: Activities of Daily Living, Cognition, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependency. In order to be found eligible for placement in either a Medicaid-reimbursed Nursing Facility or for the MI Choice Waiver program, the Appellant must meet the requirements of at least one Door.

### **Door 1** **Activities of Daily Living (ADLs)**

**Scoring Door 1:** The applicant must score at least six points to qualify under Door 1.

**(A) Bed Mobility, (B) Transfers, and (C) Toilet Use:**

- Independent or Supervision = 1
- Limited Assistance = 3
- Extensive Assistance or Total Dependence = 4
- Activity Did Not Occur = 8

**(D) Eating:**

- Independent or Supervision = 1
- Limited Assistance = 2
- Extensive Assistance or Total Dependence = 3
- Activity Did Not Occur = 8

The ██████████ Level of Care Determination(LOCD) reflects that the Appellant is independent in all activities of daily living, as that term is defined in the MI Choice Waiver. She therefore fails to score sufficiently to qualify for admission under Door 1.

### **Door 2** **Cognitive Performance**

**Scoring Door 2:** The applicant must score under one of the following three options to qualify under Door 2.

1. "Severely Impaired" in Decision Making.
2. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."

3. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

The [REDACTED] LOCD reflects that the Appellant admits to some forgetfulness but is alert and oriented to all spheres. She is also capable of providing reliable information. (*Exhibit 1; p. 21*) The Appellant did not dispute this finding. She therefore fails to score sufficiently to qualify for admission under Door 2.

### **Door 3** **Physician Involvement**

The LOC indicates that to qualify under Door 3 the Appellant must:

...[M]eet either of the following to qualify under

1. At least one Physician Visit exam AND at least four Physicians Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physicians Order changes in the last 14 days.

The [REDACTED] LOCD reflects the Appellant has had no physician visits during the 14 days preceding the assessment, and no order changes during this same period of time. (*Exhibit 1; p. 16*) She therefore fails to score sufficiently to qualify for admission to the MI Choice Waiver under Door 3.

### **Door 4** **Treatments and Conditions**

The LOCD indicates that in order to qualify under Door 4 the Appellant must receive, within 14 days of the assessment date, any of the following health treatments or demonstrated any of the following health conditions:

- A. Stage 3-4 pressure sores
- B. Intravenous or parenteral feedings
- C. Intravenous medications
- D. End-stage care
- E. Daily tracheostomy care, daily respiratory care, daily suctioning
- F. Pneumonia within the last 14 days
- G. Daily oxygen therapy
- H. Daily insulin with two order changes in last 14 days
- I. Peritoneal or hemodialysis

The ██████████ LOCD reflects that the Appellant suffers from none of the above-listed ailments, nor has she undergone any of the treatments listed under this door during the 14 days prior to the assessment. The Appellant therefore fails to qualify for admission under Door 4.

**Door 5**  
**Skilled Rehabilitation Therapies**

LOC criterion provides that the Applicant must:

...[H]ave required at least 45 minutes of active ST, OT or PT (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5

The ██████████ LOCD reflects that the Appellant has not undergone any of the skilled rehabilitation therapies listed under this door during the relevant period. (*Exhibit 1; pp. 7-8*) She therefore fails to qualify for admission under Door 5.

**Door 6**  
**Behavior**

LOC criterion provides a listing of behaviors recognized under Door 6: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, or resists Care.

LOC criterion provides that the Appellant would qualify under Door 6 if she scores under the following two options:

1. A "Yes" for either delusions or hallucinations within the last 7 days.
2. The applicant must have exhibited any one of the following behaviors for at least 4 of the last 7 days (including daily): Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, or Resisted Care.

The ██████████ LOCD indicates the Appellant has not displayed any of the listed challenging behaviors during the seven (7) days preceding the assessment. She therefore fails to qualify for admission to the MI Choice Waiver under Door 6.

**Door 7**  
**Service Dependency**

Appellant could qualify under Door 7 if there is evidence that she is currently being served in a nursing facility (and for at least one (1) year) or by the MIChoice or PACE program, and requires ongoing services to maintain current functional status. The Appellant has

been a MI Choice participant for at least one (1) year. However, the evidence presented does not support a conclusion that, without MI Choice services, which consist primarily of personal care assistance, the Appellant would be unable to maintain her current functional status.

The evidence adduced through testimony, and from documentation reviewed, indicates the Appellant has a strong natural supports. Her daughter, [REDACTED], is her hired caregiver, with whom she resides. The evidence suggests that [REDACTED] would likely qualify as a chore provider under the DHS home help service program, thus, allowing the Appellant to maintain her current functional status. (See *Exhibit 1; p. 5*)

The Appellant testified she has a number of medical ailments, but did not specifically address any of the entry doors used by the waiver agency in determining whether she satisfies criteria for continued MI Choice waiver services. Thus, based on the evidence presented, the Appellant fails to qualify for admission to the MI Choice Waiver program under Door 7.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, I decide that, based on the [REDACTED], re-assessment, the Department has properly determined the Appellant to be no longer eligible for the nursing facility level of care, and therefore ineligible for MI Choice Waiver services as of that date.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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Stephen B. Goldstein  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 11/18/2009

**\*\*\* NOTICE \*\*\***

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.