

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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

**IN THE MATTER OF:**

Docket No. 2011-23574 EDW

██████████,

Appellant

\_\_\_\_\_ /

**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 hearing was held on ██████████. The Appellant's granddaughter, ██████████, appeared on the Appellant's behalf. Her daughter, ██████████, appeared as the Appellant's witness. ██████████, Waiver Program Director, appeared on behalf of ██████████, Inc. ██████████, the Department's MI Choice Program waiver agency. ██████████, Registered Nurse Coordinator, appeared as a witness for the waiver agency.

**ISSUE**

Did the waiver agency properly terminate the Appellant's participation in the MI Choice Waiver program following eligibility review?

**FINDINGS OF FACT**

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

1. The Appellant is ██████ years old and has been a participant in MI Choice Waiver Services since ██████████. (Testimony of ██████████)
2. The Appellant has multiple diagnoses, including arthritis, esophageal reflux, asthma, and hypertension. (Exhibit 2, pages 14-15)
3. When the Appellant previously qualified for MI Choice Waiver services, she did so through Door 7. However, at that time, the waiver agency was not considering if the services were available through another program. (Testimony of ██████████)

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4. On [REDACTED], the waiver agency completed a reassessment with the Appellant. At that time, the waiver agency determined that the Appellant was no longer eligible for waiver services because she did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit 1, pages 3-8; Testimony of [REDACTED])
5. On [REDACTED], the waiver agency issued an Advance Action Notice to the Appellant indicating her MI Choice Waiver services would terminate effective [REDACTED], based on the Level of Care (LOC) Determination. (Exhibit 1, page 3)
6. The Appellant was receiving the following waiver services: homemaking, personal care, and PERS. (Testimony of [REDACTED])
7. The Appellant requested a formal, administrative hearing on [REDACTED].

**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 Appellant is claiming eligibility for 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 Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case, MORC, 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)*

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is

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reimbursable under the State Plan. (42 CFR 430.25(b))

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.

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.

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 MI Choice Waiver services, 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

**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.

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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."

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

Scoring Door 3: The applicant must meet either of the following to qualify under Door 3

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.

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

Scoring Door 4: The applicant must score "yes" in at least one of the nine categories above and have a continuing need to qualify under Door 4.

In order to qualify under Door 4 the applicant 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

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

Scoring Door 5: The applicant must have 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.

**Door 6**  
**Behavior**

Scoring Door 6: The applicant must score under one of the following 2 options to qualify under Door 6.

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.

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

Scoring Door 7: The applicant must be a current participant and demonstrate service dependency under Door 7.

The waiver agency presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7. The Appellant's representative disputed the waiver agency's testimony and evidence, asserting that the Appellant was not properly assessed by the waiver agency because her translator was not present at the assessment and the Appellant is not able to speak or write in English. The waiver agency's witness stated that the Appellant uses "broken" English to communicate.

Given the language barrier and the inconsistencies between the waiver agency's assessment and the Appellant's representative's testimony regarding the Appellant's actual needs, this Administrative Law Judge does not believe that the Appellant was properly assessed. Therefore, the waiver agency's termination cannot be upheld.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the waiver agency improperly terminated the Appellant's MI Choice Waiver services.

**IT IS THEREFORE ORDERED** that:

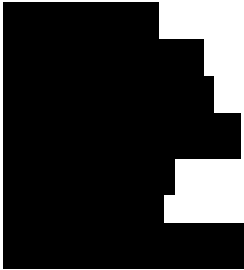
The Department's decision is REVERSED. The waiver agency is ORDERED to conduct a new assessment with a translator to determine whether or not the Appellant meets the Nursing Facility LOC Determination.

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Kristin M. Heyse  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 5/27/2011

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

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.