

**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:

██████████,

Appellant

\_\_\_\_\_ /

**Docket No.** 2012-24021 EDW  
**Case No.** ██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Appellant ██████████ appeared and testified in her own behalf.

██████████, Senior Care Manager, ██████████, (MI Choice waiver program), appeared on behalf of the Department's Waiver Agency. ██████████ a Care Manager and Social Worker with ██████████ and ██████████, Quality Manager and Master Social Worker with ██████████, appeared as a witnesses for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly determine the Appellant was not eligible 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 Appellant was enrolled in the MI Choice Waiver Program by the ██████████ in ██████████. She was receiving residential services which included home maker services, personal care, a personal emergency response system, and LPN private duty nursing. (Exhibit 1 and testimony).
2. The Appellant is a ██████████ year-old woman (DOB: ██████████) diagnosed with emphysema, hypertension, diabetes, fibromyalgia, depression, chronic back pain, leg pain, diabetic neuropathy, and diabetic retinopathy. (Exhibit 4 and testimony).

3. The Appellant currently lives alone in her own home. (Testimony).
4. The Waiver Agency is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice Waiver services.
5. On ██████████, LLMSW, Appellant's Case Manager, met with Appellant to do a Nursing Facility Level of Care Determination (NFLOC) to determine Appellant's continued eligibility for the MI Choice Waiver Program. ██████████ found the Appellant did not meet the medical eligibility or the service dependence for the MI Choice waiver services. (Exhibit 1 and testimony).
6. On ██████████, the Waiver Agency sent Appellant an advance action notice that it determined she was not medically eligible or service dependent for MI Choice Waiver Services and advised her that services would be terminated effective ██████████. (Exhibit 1).
7. On ██████████, MAHS received the Appellant's request for an administrative hearing. (Exhibit 3).
8. On ██████████, the Waiver Agency sent Appellant a Closure Letter indicating she was not eligible for care management/waiver services. Appellant was advised that programs such as PACE (██████████ ██████████) and the Michigan Senior Companionship Program may be of assistance to her.

### **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 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 Community Health (Department). Regional agencies, in this case the ██████████ 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)*

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], and is reimbursable under the State Plan. *42 CFR 430.25(c)(2)*

Home and community based services means services not otherwise furnished under the State’s Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. *42 CFR 440.180(a)*.

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization. *42 CFR 440.180(b)*.

The *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2012, provides in part:

**SECTION 1 – GENERAL INFORMATION**

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based

services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDs). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).

\* \* \*

## **SECTION 2 - ELIGIBILITY**

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish his/her financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- 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 needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order 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. (p. 1).

\* \* \*

### **2.2. FUNCTIONAL ELIGIBILITY**

The MI Choice waiver agency must verify applicant appropriateness for services by completing the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) within 14 calendar

days after the date of participant's enrollment. Refer to the Directory Appendix for website information. The LOCD is discussed in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter. Additional information can be found in the Nursing Facility Coverages Chapter and is applicable to MI Choice applicants and participants. (p. 1).

\* \* \*

### **2.2.A. MICHIGAN MEDICAID NURSING FACILITY LEVEL OF CARE DETERMINATION**

MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination. The LOCD is available online through Michigan's Single Sign-on System. Refer to the Directory Appendix for website information. Applicants must qualify for functional eligibility through one of seven doors. These doors are:

- Door 1: Activities of Daily Living Dependency
- Door 2: Cognitive Performance
- Door 3: Physician Involvement
- Door 4: Treatments and Conditions
- Door 5: Skilled Rehabilitation Therapies
- Door 6: Behavioral Challenges
- Door 7: Service Dependency

The LOCD must be completed in person by a health care professional (physician, registered nurse (RN), licensed practical nurse (LPN), licensed social worker (BSW or MSW), or a physician assistant) or be completed by staff that have direct oversight by a health care professional.

The online version of the LOCD must be completed within fourteen (14) calendar days after the date of enrollment in MI Choice for the following:

- All new Medicaid-eligible enrollees
- Non-emergency transfers of Medicaid-eligible participants from their current MI Choice waiver agency to another MI Choice waiver agency

- Non-emergency transfers of Medicaid-eligible residents from a nursing facility that is undergoing a voluntary program closure and who are enrolling in MI Choice

Annual online LOCDs are not required, however, subsequent redeterminations, progress notes, or participant monitoring notes must demonstrate that the participant continues to meet the level of care criteria on a continuing basis. If waiver agency staff determines that the participant no longer meets the functional level of care criteria for participation (e.g., demonstrates a significant change in condition), another face-to-face online version of the LOCD must be conducted reflecting the change in functional status. This subsequent redetermination must be noted in the case record and signed by the individual conducting the determination. (pp. 1-2).

\* \* \*

### **2.3.B. REASSESSMENT OF PARTICIPANTS**

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

The Waiver Agency provided evidence that on ██████████, ██████████, LMSW, Appellant's Case Manager, met with Appellant to do a Nursing Facility Level of Care Determination (NFLOC) to determine Appellant's continued eligibility for the MI Choice Waiver Program. ██████████ found the Appellant did not meet the medical eligibility or the service dependence for the MI Choice waiver services. (Exhibit 1).

The Waiver Agency presented evidence that ██████████ received Appellant's case as a transfer in ██████████ or ██████████. Appellant was considered a Door 7 case because Appellant had been receiving services for more than one year. ██████████ stated she met with Appellant on ██████████ to do a 90 day reassessment to see if she was eligible to remain in the program.

██████████ stated for Door 1 Appellant was independent in physical functioning; for Door 2 there were no problems with memory or cognitive functioning; for Door 3 there were no physician visits or physician orders within the past 14 days; for Door 4 there were no qualifying treatments or health conditions within the past 14 days; for Door 5 there were no skilled therapies; for Door 6 there were possible mental health issues such as depression and/or delusions; and for Door 7 she only met this temporary door because she had been receiving services for over a year.

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██████████ stated based on her assessment Appellant no longer met the medical eligibility for physical functioning or the service dependence for MI Choice services. ██████████ noted that Appellant's possible mental health issues did not qualify her for MI Choice services as the MI Choice Program does not cover outpatient mental health services.

██████████ stated she informed Appellant that since she no longer met the medical eligibility or service dependence she would have to be transitioned out of the program. ██████████ indicated she would assist with finding other programs that could assist her with her needs. ██████████ stated Appellant agreed to seek other services, but refused to sign the LOCD that ██████████ prepared until she was approved for services.

██████████ found that the PACE Program and the Michigan Senior Companionship Program were willing to come out and do an assessment with the Appellant. ██████████ stated when the Michigan Senior Companionship Program did their assessment they determined Appellant was eligible for their services. They were willing to enroll her and assign a companion. ██████████ then contacted Appellant to discuss discharge from the MI Choice Program.

██████████ stated that the Appellant refused to enroll in the Michigan Senior Companionship Program. ██████████ stated after consulting with her supervisor, she sent Appellant an Advance Action Notice that her services would be terminated in 12 days. Thereafter, Appellant was sent a Closure Letter with contact information for PACE and the Michigan Senior Companionship Program.

██████████ the Quality Manager for ██████████ also testified for the waiver agent. ██████████ stated their Information and Assistance Department referred Appellant for counseling to ██████████. ██████████ stated Appellant has both Medicaid and Medicare insurance coverage and ██████████ accepts Medicaid patients.

Appellant ██████████ testified after she was terminated from the MI Choice Program she went to the hospital because she was detoxing from her pain medications too rapidly. Appellant indicated she was cut off from her medical machine and her nurses and this is what caused her to go into the hospital. Appellant indicated she has fibromyalgia and short term memory loss and was not taking her medications on time. Appellant stated this made her delusional. Appellant stated she has some depression which goes along with her fibromyalgia.

Appellant testified ██████████ cut her off from the MI Choice Program because she failed one of their classes to become a MMAP programmer. Appellant testified ██████████ was only at her home for an hour to do the reassessment and did not have any nurses with her to assist with the evaluation. Appellant indicated ██████████ only did a mental assessment and advised her she did not have any memory problems. She stated she was not asked about any of her medications. Appellant stated she had been placed on Effexor for grieving and her fibromyalgia.

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Appellant indicated all the doctors she has seen have said she needs the MI Choice Waiver Program. (See e.g., Exhibit 4). Appellant stated she plummeted when ██████████ cut her off and she had to do everything for herself. Appellant stated her nurses had to keep track of her medications. She stated she has renal failure and congestive heart failure. Appellant testified ██████████ did not ask her about any of her medical conditions. Now she is back in her wheel chair again.

Appellant stated ██████████ has gone 110% for her to help her get everything back together. The caregiver they sent out helps her with everything including her finances. Appellant further stated she had a fall on ██████████ at ██████████ facility and after the fall, they came to her home in November to cut her off the program. Appellant believes that was the reason they cut her off the MI Choice Program and not her medical reasons.

Weighing the evidence in this case, the Waiver Agency provided a preponderance of evidence to show that the Appellant was not eligible for the MI Choice program. The Appellant did not prove by a preponderance of evidence that she required a Nursing Facility Level of Care and that she continued to meet the MI Choice program eligibility criteria. The Waiver Agent established that the Appellant did not meet the eligibility requirements for the program. The reassessment showed that she did not meet the medical eligibility or the service dependence required to continue in the waiver program.

██████████ established that Appellant had possible mental health issues which are not covered by the MI Choice Program. The policy quoted above clearly states: “MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility.” (Emphasis Added).

Accordingly, based upon the reassessment performed by the waiver agent on ██████████, the Appellant was no longer eligible for MI Choice program. The waiver Agency acted properly to transition her out of the program and to assist her with securing the services of other programs and providers which could meet her current needs.



**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined the Appellant was not eligible for the MI Choice waiver.

**IT IS THEREFORE ORDERED** that:

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

*William D Bond*

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William D. Bond  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed: 2/28/2012

**\*\*\* 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.