

**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. 2012-32151 EDW

██████████,

██████████

Appellant

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's niece and legal guardian, appeared and testified on Appellant's behalf. ██████████, ██████████, represented the Department of Community Health's Waiver Agency, ██████████. ██████████, a ██████████, was also present during the hearing.

**ISSUE**

Did the Waiver Agency properly terminate Appellant's services through 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. Appellant is an ██████ year-old woman who has been diagnosed with dementia, a hernia, general osteoarthritis, hypertension, and arthropathy NOS. (Exhibit 3, pages 1, 9-10).
2. ██████ 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.
3. Appellant is enrolled in and has been receiving MI Choice waiver services through ██████████ (Exhibit 3, pages 14-18).
4. On ██████████, ██████████ staff completed a reassessment and redetermination of Appellant's case. (Exhibit 3, pages 1-18; Exhibit 4,

pages 2-10). Subsequently, ██████ determined that Appellant was not eligible for the MI Choice Waiver Program because the Level of Care Assessment Tool indicated that she did not qualify for such services. (Testimony of Griner; Exhibit 3, page 18; Exhibit 4, pages 1-10).

5. On ██████████, ██████████ sent Appellant a notice that it was terminating her services because she no longer meets the medical eligibility criteria to be in the waiver program. The effective date of the termination from the program was identified as ██████████. (Exhibit 5, page 1).
6. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 6, page 1).

### **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.

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, Nursing Facilities Coverages Section, January 1, 2012, lists the policy for admission and continued eligibility as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MI Choice, and PACE services.

Section 2.2 of the MI Choice Waiver chapter of the Medicaid Provider Manual references the use of the online Michigan Medicaid Nursing Facility Level of Care (NFLOC) Determination Tool. The NFLOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. The NFLOC is available online through Michigan's Single Sign-on System. (Refer to the Directory Appendix for website information.)

The NFLOC 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 Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door.

Here, Senior Alliance provided evidence that its staff completed a NFLOC determination to determine if Appellant still met criteria for the MI Choice waiver program. The Senior Alliance staff subsequently determined that Appellant was no longer eligible for the MI

Choice waiver program because she does not satisfy the criteria for any of the 7 Doors.

For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's decision on all seven doors should be sustained.

**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

(Exhibit 4, page 3)

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

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

2. "Severely Impaired" in Decision Making.
3. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."
4. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

(Exhibit 4, page 4)

**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 Physician Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physician Order changes in the last 14 days.

(Exhibit 4, page 5)

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

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

- 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

(Exhibit 4, page 5)

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

**Scoring Door 5:** The applicant must have required at least 45 minutes of active [Speech Therapy], [Occupational Therapy] or [Physical Therapy] (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5

(Exhibit 4, page 6)

**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.

(Exhibit 4, page 7)

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

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

(Exhibit 4, page 7)

In this case, ██████████ testified that she completed the ██████████ determination with Appellant and Appellant's guardian, and that, based on the answers she was given, Appellant did not meet the criteria for any of the seven doors described above. ██████████).

██████████ testimony confirmed that, based on the answers she and Appellant gave ██████████ correctly completed the ██████████ determination. (Testimony of ██████████). However, ██████████ also testified that Appellant lied during the assessment because Appellant was afraid that Appellant would be sent to a nursing home if Appellant told the truth. (Testimony of ██████████. According to ██████████, Appellant had been abused by the staff at a nursing home previously. (Testimony of ██████████. ██████████ further testified that she did not correct Appellant during the assessment or provide Griner with the correct information because she did not want to embarrass Appellant. (Testimony of ██████████).

While this Administrative Law Judge appreciates Appellant's fears and can understand her reasons for being dishonest, the review of the Waiver Agency's decision is limited to the information it had at the time of the decision and the Waiver Agency is justified in relying on the answers given to it by Appellant. Given those clear answers, it had no choice but to terminate Appellant's services. To the extent that Appellant now argues that the information given to the agency was incorrect and that she still meets the criteria for the program, she will have to reapply.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly terminated Appellant's MI Choice waiver services.

**IT IS THEREFORE ORDERED** that:

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

---

Steven J. Kibit  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:



Date Mailed:     4-3-12    

**\*\*\* 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.