

week and lawn care services. (Testimony of Shepherd).

4. On ██████████ AAA staff completed a reassessment of Appellant's needs and services. Subsequently, AAA staff determined that Appellant was not eligible for the MI Choice Waiver Program. (Exhibit 1, pages 27-33; Testimony of ██████████).
5. On ██████████ AAA sent Appellant a notice that it was terminating her services because she does not meet the medical criteria to be in the waiver program. The effective date of the termination from the program was identified as ██████████ (Exhibit 3, page 1).
6. On ██████████ the Department received a Request for Hearing signed by Appellant regarding the termination of waiver services. (Exhibit 3).
7. Given Appellant's timely appeal, her services have remained in place while this appeal was pending. (Testimony of Shepherd; Testimony of ██████████).

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, ██████████ 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.

Here, AAA decided the terminate Appellant's services after finding that she did not meet the medical criteria for the waiver program and that she did not require the program's services. Appellant disputes both of those findings and argues that she both satisfies the functional eligibility requirements of the program and the need for services requirement. For the reasons discussed below, this Administrative Law Judge finds that, while Appellant appears to be functionally eligible for the waiver program, she does not have a medical necessity for the program's services and the Waiver Agency's decision to terminate should be affirmed.

With respect to functional eligibility for the waiver program, the Medicaid Provider Manual (MPM) provides:

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 the 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.

The applicant must also demonstrate a continuing need for and use of at least one covered MI Choice service. This need is originally established through the Initial Assessment using the process outlined in the Need For MI Choice Services subsection of this chapter.

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 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.

Copies of the LOCD for participants must be retained by the waiver agency for a minimum period of six years. This information is also retained in the MDCH LOCD database for six years.

(MPM, MI Choice Waiver Section,
January 1, 2012, pages 1-2)

In this case, Appellant argues that she is functionally eligible for the waiver program and meets the medical criteria for the program because she satisfies the requirements for Door 2, Door 6, and Door 7.

Regarding Door 2, the LOCD tool states:

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 1, page 13)

During the reassessment, ██████████ determined that Appellant did pass through Door 2 based on ██████████ observations and Appellant's reports of memory problems and impaired decision making. (Exhibit 1, page 13; Testimony of ██████████). However, in a subsequent discussion between ██████████ and her supervisors, AAA found that Appellant does not pass through Door 2. (Testimony of ██████████). According to ██████████, the change was based on the fact that Appellant can function with reminders and prompts, and that Appellant can perform tasks such as driving. (Testimony of ██████████). In particular, Appellant actually drives to and picks up her care provider every other weekend. (Testimony of ██████████). ██████████ also testified that the Door 2 determination was made in light of Appellant's ability to live alone for two weeks at a time without any assistance, take care of animals, and driving. (Testimony of Broderick).

In response, Appellant and her representative testified that, while Appellant can perform the tasks identified above, she still passes through Door 2. For example, while Appellant does live alone for almost two weeks at a time without assistance, she merely lies in bed during most of that time period and she is limited to eating oatmeal or bread. (Testimony of Appellant; Testimony of King). Appellant also neglects tasks such as cleaning or laundry during while she is alone, and she waits for her aide to come and perform those tasks. (Testimony of Appellant; Testimony of ██████████). Similarly, while Appellant can drive, she only does so because it is necessary and she relies completely on her GPS system to direct her. (Testimony of Appellant; Testimony of ██████████). Appellant and ██████████ further testify that, while Appellant can feed animals and get the mail while living alone, she can only do so with guidance from ██████████ over the telephone. (Testimony of Appellant; Testimony of ██████████). ██████████ also noted during the hearing that memory problems are a symptom of Appellant's narcolepsy with cataplexy. (Exhibits 6 and 7).

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in finding that she does not pass through Door 2. Given the above evidence, this Administrative Law Judge finds that Appellant has met that burden. Based on Appellant's reports and the social worker's observations, AAA initially found that Appellant passed through Door 2 while assessing her. Nothing discussed later should have changed that finding.

Appellant may be able to live alone for a significant amount of time, but her lifestyle while doing so is extremely limited and it is planned out for her. Beyond completing some simple tasks, during which ██████████ is directing her over the telephone, Appellant does nothing and eats simple meals. Accordingly, nothing about staying home alone demonstrates any ability to make decisions or contradicts her documented memory problems. Likewise, while Appellant can drive, she requires a GPS to direct her and she will not drive without it or ██████████ telling her what to do. Despite Appellant's ability to drive and to live alone for almost two weeks, the evidence in this case supports Appellant's reports and AAA's initial finding regarding Appellant's memory problems and impaired decision making. Therefore, Appellant has met her burden of proof and the Waiver Agency erred in finding that she did not pass through Door 2.

Regarding Door 6, the LOCD tool states:

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 1, pages 15-16)

After initially finding that Appellant passed through Door 2, ██████████ did not continue with the LOCD while visiting with Appellant. (Testimony of ██████████). Consequently, Appellant was never asked about the behaviors, such as wandering, encompassed by Door 6. (Testimony of ██████████). However, during the subsequent meeting of AAA staff, AAA determined that Appellant did not pass through any of the doors on the LOCD, including Door 6. (Testimony of ██████████). The AAA staff made that determination without having any information regarding Door 6 behaviors. (Testimony of ██████████).

Appellant and her representative testified during the hearing that Appellant often wanders. (Testimony of Appellant; Testimony of ██████████). In particular, ██████████ testified that she wanders four to five times a week. She will call him while wandering or just after, and she will appear to be in a fog. She also gets distracted easily and has no concern for her safety. For example, ██████████ testified regarding an incident where Appellant burned herself after getting distracted and interacting with a fire. (Testimony of ██████████). Moreover, while there is no specific documentation from a medical source regarding wandering, Appellant has been diagnosed as suffering from narcolepsy with cataplexy (Exhibit 9, page 1) and a symptom of that disease is wandering (Exhibit 7).

The Field Definition Guidelines for the LOCD state, with respect to wandering, that:

Wandering describes those applicants who move about (in and out of doors) with no discernible, rational purpose. Individuals who wander may be oblivious to their physical or safety needs. Wandering behavior should be differentiated from purposeful movement (i.e., a hungry applicant moving about the apartment in search of food). Wandering may be walking or by wheelchair. Do not include pacing as wandering behavior. Wandering can occur indoors or out of doors.

(Field Definition Guidelines, pages 13-14 of 19)

Here, the only evidence in the record involving wandering demonstrates that Appellant does suffer from wandering and, consequently, satisfies the criteria for Door 6. The Waiver Agency completely failed to address Door 6 during the reassessment and, if it would have asked Appellant and ██████████ about wandering, it would have learned that Appellant wanders. Appellant's and ██████████ testimony, in addition to her diagnosis of narcolepsy with cataplexy, all support such a finding. Appellant has met her burden of proving by a preponderance of the evidence that the Waiver Agency erred in finding that

Appellant did not pass through Door 6 and that decision should be reversed.¹

As discussed above, in addition to being functionally eligible for the waiver program, an applicant must also demonstrate a need for MI Choice services:

2.3 NEED FOR MI CHOICE SERVICES

In addition to meeting financial and functional eligibility requirements and to be enrolled in the program, MI Choice applicants must demonstrate the need for a minimum of one covered service as determined through an in-person assessment and the person-centered planning process.

Note: Supports coordination is considered an administrative activity in MI Choice and does not constitute a qualifying requisite service. Similarly, informal support services do not fulfill the requirement for service need.

An applicant cannot be enrolled in MI Choice if their service and support needs can be fully met through the intervention of State Plan or other available services. State Plan and MI Choice services are not interchangeable. MI Choice services differ in nature and scope from similar State Plan services and often have more stringent provider qualifications.

(MPM, MI Choice Waiver Section,
January 1, 2012, page 3)

Here, AAA found that Appellant does not have a need for MI Choice services and, consequently, her services must be terminated. In support of that determination, AAA relied on Appellant's ability to live alone for significant periods of time, her ability to drive, and her ability to perform other chores around the home.

While Appellant does not dispute that she can perform the tasks identified by the Waiver Agency, she also argues that she can only do so with significant restrictions and assistance. According, to Appellant, those restrictions and assistance further demonstrate why she still requires MI Choice waiver services.

As discussed above, Appellant bears the burden of demonstrating by a preponderance

¹ Appellant also argues that she meets the requirement for Door 7, which requires that she be a current participant in the waiver program and demonstrate service dependency. (Exhibit 1, page 16). Given this Administrative Law Judge's finding with respect to Doors 2 and 6, Appellant need not pass through Door 7 to be functionally eligible for the waiver program. Moreover, service dependency is always a requirement for enrollment in the program, regardless of whether an applicant passes through any of the doors, and the need for services is disputed in this case. Accordingly, the question of whether Appellant meets the criteria for Door 7 is related to the question of whether she has a need for MI Choice services and the same reasoning discussed below would apply to a Door 7 analysis.

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of the evidence that the Waiver Agency erred in finding that she does not require MI Choice services and that those services should be terminated. This Administrative Law Judge finds that Appellant has failed to meet that burden in this case and that AAA's decision to terminate services should therefore be affirmed.

It is undisputed that Appellant lives a restricted lifestyle. However, it is also undisputed that she is able to go without MI Choice services for significant periods of time. Her care provider only comes every other weekend and there is nothing to suggest that Appellant could not go even longer without any assistance. Moreover, while Appellant leaves certain tasks for her care provider, such as laundry, she also does what is necessary while she is living alone, such as feeding her animals. Appellant talks with ██████████ over the telephone while feeding the animals or picking up the mail, and nothing in record suggests that, if necessary, Appellant could not perform tasks such as laundry the same way.

Appellant's undisputed ability to drive only reinforces that conclusion. That she requires some direction while driving does not change the fact that she can drive and can do so without any physical assistance.

Appellant uses the self-determination method of receiving MI Choice services and, together with ██████████ she has directed how such services are delivered. They have worked out a system where Appellant is alone for long stretches of time and where her care provider only comes every other weekend, after Appellant drives and picks her up. However, given all that Appellant can do, it does not appear that such services are necessary and the Waiver Agency properly decided to terminate the services.

Given Appellant's diagnoses and conditions, she may be able to seek assistance from other sources, such as Community Mental Health services. Appellant asserts that she has tried to get such services in the past and was denied. Nevertheless, that denial appears to have occurred years ago and, given her significant mental health issues, it may benefit her to apply again.

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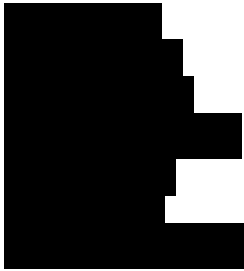
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly terminated Appellant's MI Choice waiver services.

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: _____

***** 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.