

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
**FOR THE DEPARTMENT OF COMMUNITY HEALTH**  
P.O. Box 30763, Lansing, MI 48909  
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

**Docket No.** 2012-47288 EDW  
**Case No.** [REDACTED]

[REDACTED]  
Appellant  
\_\_\_\_\_ /

**DECISION AND ORDER**

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

After due notice, a hearing was held on [REDACTED] [REDACTED] Appellant appeared and testified on his own behalf. [REDACTED]

[REDACTED] Senior Resources, Region 14 AAA ("Waiver Agency" or "Senior Resources"). [REDACTED] testified as witnesses for [REDACTED]

**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 a [REDACTED] [REDACTED] who has been diagnosed with, among other conditions, bilateral foot amputations, hypertension, depression, and diabetes mellitus. (Exhibit 2, pages 1, 8-9).
2. Senior Resources 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 has been enrolled in and receiving MI Choice waiver services through Senior Resources since [REDACTED]. (Testimony of Corbett).

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<sup>1</sup> The hearing was originally scheduled for June 6, 2012, but was adjourned at the request of the Appellant.

4. On ██████████ completed both a reassessment of Appellant's needs and services (Exhibit 2) and a Level of Care Determination (LOCD) (Exhibit 4). Appellant had received a new prosthetics for his legs by the time of the assessment. (Exhibit 2, page 9).
5. At that time, based on Appellant's reports and their own observations, they found that Appellant was ineligible for the waiver program and, consequently, that his services should be terminated. (Testimony of ██████████ .
6. Appellant agreed with the Waiver Agency's findings at the time of the reassessment. (Testimony of Appellant). With his prosthetics, he was independent in bed mobility, transferring, toileting and eating. (Testimony of Appellant).
7. On ██████████ Senior Resources sent Appellant a written notice that it was terminating his services through the waiver program because he no longer qualifies for the program. The effective date of the termination was identified as ██████████. (Exhibit 1, pages 1-2).
8. On ██████████ the Department received a Request for Hearing regarding the termination of services in this case. (Exhibit 3, page 1).
9. Appellant filed the appeal because his knee problems have worsened since the reassessment and there are some days when he cannot use his prosthetics at all. Appellant now believes that he needs services again. (Testimony of Appellant).
10. Appellant's services have continued while this appeal is pending. (Testimony of Appellant).

### **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, Senior Resources decided to terminate Appellant's services after finding that he did not meet the medical criteria for the waiver program. Appellant disputes that finding. For the reasons discussed below, this Administrative Law Judge finds that 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,  
April 1, 2012, pages 1-2)

In this case, Appellant was found to have meet the criteria for the waiver program through “Door 1: Activities of Daily Living Dependency” until his most recent assessment.

Regarding Door 1, the LOCD tool states:

**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

At the most recent assessment, Appellant specifically reported that, now that he had his new prosthetics, he was independent in bed mobility, transferring, toileting and eating. (Testimony of Appellant). Consequently, Senior Resources found that he did not pass through Door 1.

Based on Appellant’s other reports and their own observations, the Senior Resources staff also found that he did not pass through any other door. Accordingly, they terminated his services.

Appellant now argues that his knee problems have worsened since the reassessment and there are some days when he cannot use his prosthetics at all. Appellant now believes that he needs services again and that he passes through Door 1. However, he also concedes that, during the assessment, he told the Waiver Agency's staff that he was independent.

This Administrative Law Judge's jurisdiction is limited to reviewing the Waiver Agency's decision in light of the information available at the time it made its decision. Here, that information was provided by Appellant and it clearly demonstrates that he was not eligible for the waiver program at the time the decision to terminate was made. Therefore, the Waiver Agency's decision must be affirmed. To the extent Appellant's condition has worsened since the decision to terminate was made, he must make a new request to the Waiver Agency for services.

**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 given the information available at the time.

**IT IS THEREFORE ORDERED** that:

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

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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.