

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

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IN THE MATTER OF:

██████████,

Appellant

\_\_\_\_\_ /

Docket No. 2012-5149 EDW  
Case No. 25236814

**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 appeared and testified on his own behalf. ██████████, Special Projects Manager, represented the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "AAA").

**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 ██████ year-old man who reports having suffered a stroke and having pain in his foot. Appellant also states that he requires oxygen at times. (Exhibit 3, page 1; Testimony of Appellant).
2. AAA 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 AAA. (Exhibit 1, pages 1-3).
4. To be eligible for MI Choice waiver services, a person must qualify for functional eligibility through one of seven doors of the Michigan Medicaid

5. Nursing Facility Level of Care (NFLOC) Determination. (Medicaid Provider Manual, MI Choice Waiver Chapter, Section 2.2.A. Michigan Medicaid Nursing Facility Level of Care Determination, ██████████, pages 1-2).
6. On ██████████ ██████████ ██████████ ██████████ ██████████ completed an NFLOC determination with Appellant. (Exhibit 3, pages 1-6). Subsequently, AAA determined that Appellant was not eligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that he did not qualify for such services. (Exhibit 3, pages 1-6; Testimony of ██████████).
7. On ██████████ ██████████, AAA sent Appellant a notice that it was terminating his services because he 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 12 days from the date of the notice. (Exhibit 5, pages 1-2).
8. On ██████████ ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 5, 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 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 2.2A of the Medicaid Provider Manual, MI Choice Waiver chapter references the use of the online Michigan Medicaid 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. A written form of the NFLOC, as well as field guidelines for the determination, is found online through Michigan's Single Sign-on System.

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, AAA provided evidence that on ██████████, ██████████ completed a NFLOC determination to determine if Appellant still met criteria for the MI Choice waiver program. AAA subsequently determined that Appellant was no longer eligible for the MI Choice waiver program because he 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 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 3, 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 3, 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 3 page 4)

**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 3, 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 3, page 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.

(Exhibit 5, page 6)

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

An applicant could qualify under Door 7 if she is a “**Program participant for at least one year** and requires ongoing services to maintain current functional status.” (Exhibit 3, page 6 (emphasis in original)).

Here, ████████ testified that, based on the information Appellant supplied for the completed NFLOC determination form, Appellant does not pass through any of the 7 doors. In particular, ████████ noted that, while Appellant has previously passed through Door 4 on the basis that he required daily oxygen therapy, Appellant informed ████████ that he does not require oxygen 24 hours a day/7 days a week and, consequently, Appellant cannot pass through Door 4. In response, Appellant expressly confirmed that everything ████████ testified to is true, including her testimony that he does not require daily oxygen therapy. Given that confirmation by Appellant of ████████ clear testimony, Appellant does not satisfy the criteria for any of the above doors.

Appellant bears the burden of proving by a preponderance of the evidence that the decision to terminate his services was in error. Here, given Appellant’s clear failure to satisfy the criteria for Doors 1 through 7, Appellant has failed to meet his burden. Therefore, the Waiver Agency’s decision must be sustained.

  
Docket No. 2012-5149 EDW  
Decision and Order

**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**.

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

cc:



Date Mailed: 1/19/2012

**\*\*\* 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.