

**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. 2012-52326 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]. Appellant appeared and testified on his own behalf. [REDACTED] represented the [REDACTED] [REDACTED] the [REDACTED] on Aging (" [REDACTED] and [REDACTED] also testified as witnesses for [REDACTED].

**ISSUE**

Did the Waiver Agency properly deny Appellant's request for 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] who has a history of heart problems, back surgeries, and neck surgeries. (Exhibit 2, page 1; Testimony of Appellant).
2. While living in Bay County for the past few years, Appellant had been enrolled in the waiver program and he received MI Choice waiver services. (Exhibit 2, page 1).
3. In [REDACTED] Appellant moved to Genesee County and his case was transferred to [REDACTED]. (Exhibit 2, page 1; Testimony of Appellant; Testimony of Champagne).
4. [REDACTED] is a contract agent of the [REDACTED] and is responsible for waiver eligibility determinations and the

provision of MI Choice waiver services.

5. On ██████████ ██████████ spoke with Appellant and assessed ██████████ ██████████ (Exhibit 1, pages 3-10).
6. Based on the answers Appellant gave and his own observations, ██████████ found that Appellant did not qualify for the waiver program. (Testimony of ██████████).
7. On ██████████ ██████████ that it was denying his request for services through the waiver program because he is medically ineligible. (Exhibit 1, page 2).
8. On ██████████ the Department received a Request for Hearing regarding the denial in this case. (Exhibit 2, 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 ██████████ ██████████ ██████████ 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, ██████████ decided to deny 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 should be affirmed.

With respect to functional eligibility for the waiver program, the ██████████ 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)

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

(Exhibit 1, page 5)

Here, the Waiver Agency found that Appellant was independent in all four tasks addressed by Door 1 and that he therefore did not pass through that door. According to ██████████, he based those findings on Appellant's own reports.

During the hearing, Appellant testified that he suffers from physical problems and pain as a result of his numerous surgeries. Appellant also identified a number of tasks he needs assistance with, including housework, shopping, meal preparation and driving. However, Appellant does not require assistance with the tasks identified in Door 1 and, consequently, the Waiver Agency's decision with respect to that door must be affirmed.

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 6)

Here, it is undisputed that Appellant does not satisfy the criteria for Door 2. Appellant only testified that he has physical limitations and he is easily understood. The Waiver Agency staff also reported that Appellant passed a memory test during the assessment.

### **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 1, page 7)

It is undisputed in this case that Appellant's schedule does not usually satisfy the criteria for Door 3. Appellant also does not recall if he visited the doctor more than normal during the relevant time period. Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred. With respect to Door 3, Appellant failed to meet that burden as he provides no evidence contradicting the Waiver Agency's conclusion and is not even sure if he disputes that finding. Accordingly, the Waiver Agency's decision with respect to Door 3 must be affirmed.

### **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 1, page 7)

Here, Appellant testified that he sometimes uses an ██████████. However, the amount of time he uses it varies and he did not require ██████████ at the time of the assessment. Moreover, as testified by ██████████ daily ██████████ therapy requires 24 hour use, 7 days a week, in order to pass through Door 4. Appellant does not require such care, or any other care identified in Door 4, and the Waiver Agency's decision with respect to Door 4 must be affirmed.

Regarding Door 5, the LOCD tool states:

**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 1, page 8)

Here, it is undisputed that Appellant did not attend any skilled rehabilitation therapies at the time of the assessment and does not satisfy the criteria for 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, page 9)

Given Appellant's reports during the assessment and testimony during the hearing, it is undisputed that he does not pass through Door 6.

Regarding Door 7, the LOCD tool states:

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

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

(Exhibit 1, page 9)

According to ██████████, while the county where Appellant used to live found that Appellant passed through Door 7, the Waiver Agency reached a different conclusion after his case was transferred to ██████████. The Waiver Agency found that Appellant did not have a service dependency given his limited need for assistance, the presence of a roommate who helps Appellant, and the availability of services through other programs offered by the ██████████ or the ██████████  
██████████

Appellant acknowledges that he has a roommate who assists him with some tasks, but he also testified that the roommate is not always present. Appellant further testified that he did not qualify for assistance with ██████████ because he has a Medicaid spend-down that he cannot reach. According to Appellant, he is eligible for services through ██████████ ██████████ but he used the services earlier and did not like the way they were delivered.

Appellant has the burden of proving by a preponderance of the evidence that the Waiver Agency erred in finding that he did not pass through Door 7. However, given the assistance given by Appellant's ██████████ and the availability of assistance through ██████████ Appellant cannot meet that burden in this case. He failed to demonstrate a service dependency and AAA's decision must be affirmed.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied Appellant's request for 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: \_\_\_\_\_

**\*\*\* 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.