

**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. 2012-63925 EDW**

**Case No. ██████████**

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. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ Bettina Miller Appellant's niece/paid caregiver appeared and testified on the Appellant's behalf.

██████████ LBSW, Waiver Services Manager, Region II Area Agency on Aging, appeared and testified on behalf of the Department's Waiver Agency. ██████████, Quality Management Supervisor Region II Area Agency on Aging also testified on behalf of the Waiver Agency. ██████████ Commit, LBSW, Care Manager Region II Area Agency on Aging was also present but did not testify.

**ISSUE**

Did the Department's Waiver Agency properly terminate Appellant's MI Choice Waiver services?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████-year-old man, DOB ██████████, who was enrolled in the MI Choice Waiver Program. He had been receiving 12 hours per week of Community Living Supports (CLS). Appellant's niece was his paid caregiver. (Exhibits 3, 6 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
3. The Appellant lives alone in his own apartment. (Exhibit 6 and testimony).

4. On ██████████ Claire Warner , RN, Quality Management Supervisor Region II Area Agency on Aging and Dawn Benz, RN, the Deputy Quality Management Supervisor met with Appellant to do a Nursing Facility Level of Care Determination (NFLOC) to determine Appellant's continued eligibility for the MI Choice Waiver Program. Ms. Warner found the Appellant did not meet the medical eligibility or the service dependence for the MI Choice waiver services. (Exhibits 1, 3, 4, 6, 8 and testimony).
5. On ██████████ the waiver agency sent an Advance Action Notice to the Appellant notifying him of a termination of MI Choice Waiver services including his Community Living Supports (self determination. (Exhibits 1, 3 and testimony).
6. On ██████████ MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 2).

### **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 (CFR). 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.

This Appellant was receiving services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (CMS, formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies function as the Department's administrative agency.

Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440 and subpart G of part 441 of this chapter. [42 CFR 430.25(b)].

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2012, which provides in part:

**SECTION 1 – GENERAL INFORMATION**

MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDs). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.

MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).

\* \* \*

**SECTION 2 - ELIGIBILITY**

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish his/her financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program. (p. 1).

\* \* \*

## **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 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. (p. 1).

\* \* \*

### **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 fourteen (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. (pp. 1-2).

\* \* \*

### **2.3.B. REASSESSMENT OF PARTICIPANTS**

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

The Waiver Agency provided evidence that on ██████████ ██████████ RN, Quality Management Supervisor Region II Area Agency on Aging and Dawn Benz, RN, the Deputy Quality Management Supervisor met with Appellant to do a Nursing Facility Level of Care Determination (NF LOC) to determine Appellant's continued eligibility for the MI Choice Waiver Program. ██████████ stated they found that the Appellant did not meet the medical eligibility or the service dependence for the MI Choice waiver services.

██████████ stated they went to Appellant's residence to do the reassessment and found that Appellant did not qualify for medical eligibility through any of the seven doors. Appellant was found to be independent in his activities of daily living. Appellant had no problems with his memory. He had not seen the doctor within the last month. He was not receiving any current treatments. Appellant was not undergoing any rehabilitation therapies. He reported no challenged behaviors within the last seven days. ██████████

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stated the Appellant was not found to be service dependent. (See Exhibit 8).

The Appellant's niece testified she was the Appellant's payee and was being paid 12 hours per week to handle Appellant's affairs. Appellant's niece indicated this matter could have been avoided if they had contacted her first. She stated Appellant was illiterate and she had to read things and explain things to the Appellant. Appellant's niece alleged the Appellant did not have the mental capacity to handle his affairs. She admitted, however, that she was not Appellant's guardian, and did not have a power of attorney over the Appellant. Apparently, the Appellant has not been declared unable to handle his own affairs.

Appellant's niece stated she did not learn of this matter until Appellant had already been determined to be ineligible for the MI Choice waiver program. Appellant's niece stated she received information from Appellant's doctor just yesterday showing his medical conditions. This information was not previously provided to the waiver agency.

The Appellant bears the burden of proving, by a preponderance of evidence, that the waiver agency did not properly terminate his MI Choice Waiver services. A preponderance of the material and credible evidence establishes that the MI Choice Waiver agency acted in accordance with the policy contained in the Medicaid Provider Manual, and its actions were proper when it terminated the Appellant's MI Choice program services. Therefore, the Appellant has failed to prove that the waiver agency's actions were not proper when it terminated the Appellant's MI Choice program services.

Based upon the reassessment performed by the waiver agent on the Appellant was no longer eligible for MI Choice program. Therefore, the waiver Agency acted properly to terminate the Appellant from the program.

**DECISION AND ORDER**

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

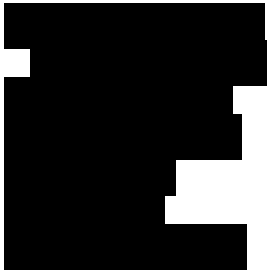
**IT IS THEREFORE ORDERED** that:

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

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William D. Bond  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

cc:



Date Mailed: 9/13/2012

**\*\*\* 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.