

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-29655 EDW
Case No. ██████████

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 ██████████. Appellant's daughter ██████████ appeared and testified on the Appellant's behalf. ██████████, RN, with ██████████ Care and Hospice, ██████████, Appellant's Homecare Aide with the Community Action Agency, and ██████████, the In Home Services Manager with the Community Action Agency also appeared as witnesses for the Appellant.

██████████, MI Choice Waiver Program Director, appeared on behalf of the Department's Waiver Agency ██████████, ██████████ (UPCAP). ██████████, LBSW, UPCAP's Social Work Care Manager testified on behalf of the Waiver Agency. ██████████, LBSW, and ██████████, RN, Transactional Coordinators for UPCAP were 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 an ██████-year-old man, DOB ██████████, who was enrolled in the MI Choice Waiver Program. (Exhibits A, Item 1 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
3. On ██████████, Appellant was enrolled in the MI Choice Waiver Program by UPCAP when he transitioned from a nursing facility to his

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home. Appellant was determined to be functionally and financially eligible for the Waiver Program, qualifying on the Nursing Facility Level of Care Determination (LOCD) through Door 1. (Exhibit A, Item 11, pp. 12-14 of 14).

4. On ██████████, ██████████, LBSW, UPCAP's Social Work Care Manager, met with Appellant to do a LOCD to determine Appellant's continued eligibility for the MI Choice Waiver Program. ██████████ found Appellant no longer met the medical eligibility requirement for the MI Choice Waiver Program. (Exhibit A, Items 1, 2, 11 p. 7 of 14, and testimony).
5. On ██████████, the waiver agency sent an Advance Action Notice to the Appellant notifying him he was no longer medically eligible for the MI Choice Waiver Program and of the termination of his MI Choice services. (Exhibit A, Item 7 and testimony).
6. On ██████████, MAHS received the Appellant's request for an Administrative Hearing. (Exhibit A, Item 9).

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)].

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The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2013, 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

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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 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.

* * *

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.

MI Choice uses a case status classification system to determine the reassessment and service plan review and the update schedule for program participants. Supports coordinators designate a case status for each participant at the time of service plan development or reassessment using professional judgment in determining participant needs.

Participants classified with active status are those individuals with the most difficult, unstable, or complex needs that require more intensive involvement. Supports coordinators classify participants as active when it is determined that the participant requires a reassessment every 90 days, or more frequently when necessary.

Participants classified with maintenance status are more physically stable and less complex than active cases. Monitoring is required less frequently. At the time of the second reassessment (180 days), the supports coordinator may designate the participant as on maintenance status. Subsequent to the second reassessment, the supports coordinator may designate maintenance status when the participant's situation is currently stable. The participant's level of frailty, risk, or illness determines that the participant requires a reassessment every 180 days or more frequently when necessary.

Supports coordinators may change the case status classification of participants as indicated upon reassessment. Regardless of a defined case status classification, participants may refuse reassessment. The supports coordinator must note this refusal in the case record. However, to maintain program eligibility, the supports coordinator must assess all program participants at least every 180 days. A refusal which prevents a redetermination within the 180-day window is cause for termination from the program. (p. 4, emphasis added).

The Waiver Agency provided reliable evidence that on ██████████, ██████████, ██████████, LBSW, UPCAP's Social Work Care Manager, met with Appellant and his wife at their home to do a Nursing Facility Level of Care Determination (LOCD) to determine Appellant's continued eligibility for the MI Choice Waiver Program. (See Exhibit A, Item

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1 and testimony). ██████████ stated she found the Appellant did not meet the medical eligibility for the MI Choice waiver program, (i.e., Appellant did not qualify for functional eligibility through any of the seven doors on the LOCD).

██████████ found for Door 1 that the Appellant was independent in bed mobility, transfers, and toilet use. Appellant reported he was able to move about his bed, turn side to side, and position himself. He needed no assistance within the past seven days. This was all confirmed by Appellant's wife. ██████████ also determined from Appellant's physical therapist that upon his discharge, he was able to ambulate in his home with his walker independently, and could go up and down the stairs with handrails and supervision. For Door 2 Cognitive Performance Appellant reported to ██████████ he did not have any difficulty making decision regarding daily activities. She questioned him about his previous diagnosis of vascular dementia, which was not a current diagnosis from Appellant's primary care physician. Appellant reported no confusion or dementia like symptoms and none were noted by ██████████. She also conducted a Brief Interview for Mental Status (BIMS, see Exhibit A, Item 2). The BIMS score of 14 out of 15 indicated Appellant was cognitively intact. For Door 3 Physician Involvement, ██████████ determined there were no physician exams or order changes within the last 14 days. For Door 4 Treatments and Conditions, ██████████ determined the Appellant did not have any of the listed conditions or treatments to qualify under this door. For Door 5 Skilled Rehabilitation Therapies, ██████████ found Appellant was no longer receiving any skilled rehabilitation therapies; he was discharged from physical therapy and was only continuing a home exercise program with the help of his caregiver. (See Exhibit A, Item 4). For Door 6 Behavior, ██████████ determined that Appellant was not exhibiting any of the listed behaviors within the previous seven days, and Appellant reported no delusions or hallucinations within the previous seven days. For Door 7 Service Dependency, ██████████ determined the Appellant was not eligible under this door because he had not been enrolled in the MI Choice Program or PACE and had not resided in a Medicaid reimbursed facility for at least one year.

██████████ stated she sent Appellant an Advance Action notice advising that his MI Choice case would be closed and his services would be terminated. (See Exhibit A, Item 7). On ██████████, UPCAP Care Managers ██████████, LSBW, and ██████████, RN, met with Appellant and his wife in their home and conducted another reassessment which confirmed that the Appellant still did not meet the LOC for medical eligibility for the MI Choice Waiver Program. (See Exhibit A, Item 8-B and Item 11, p. 1 of 14).

██████████, RN, with ██████████ Home Care and Hospice testified that she questions whether Appellant should qualify under Door 2 because she sees him for vascular dementia. ██████████ indicated Appellant has demonstrated poor decision making, choosing to ambulate without supervision and he falls frequently because he cannot feel his feet, and he is on Coumadin which puts him at high risk if he should start to bleed. ██████████ stated she did not think that UPCAP had this information when it did the assessment of the Appellant for the waiver program. ██████████ noted that Appellant has good days and bad days, and that some days he can walk okay. She

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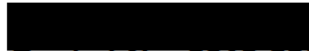
stated he also has good days and bad days cognitively. She stated it was her opinion that [REDACTED] probably saw the Appellant on a good day. [REDACTED] also agreed that based upon the information that [REDACTED] obtained on the day of her assessment it did not appear that the Appellant was still eligible for the MI Choice Program at that time. [REDACTED] said if Appellant was the same everyday as the day he was assessed he would not be eligible for the waiver program.

Appellant's daughter testified the Appellant has a rail on his bed because he kept falling out of bed. She also indicated she has seen the Appellant fall multiple times, and the last time he fell one week ago, he received a cut on his head and bled a lot. She said some days he can raise himself out of the chair and sometimes he falls down when he goes to sit in the chair. Appellant's daughter indicated they have to clean up after the Appellant when he goes pee in the bathroom. She indicated he is legally blind in one eye and has a stint in the other eye. She indicated she believes the Appellant does hallucinate; that he sees rats and mice on the floor, and has seen a flying squirrel. Appellant's daughter said the Appellant does have some cognitive problems as he can no longer remember how to play a guitar, something he had been able to do for about 40 years. She also said his caregivers don't let him go up and down the stairs anymore. Appellant's daughter indicated she was afraid if the Appellant loses his caregivers, he will fall again and will wind up back in a nursing home.

[REDACTED], Appellant's Homecare Aide with the Community Action Agency, testified she had looked through the Appellant's closet for evidence of a flying squirrel. She indicated Appellant use to have a patch over his eye to help with his balance and his depth perception. [REDACTED] said sometimes he misses grabbing onto the handle of his walker when he tries to get out of his chair. She also stated he does use a large spoon to eat his food. [REDACTED] testified she was trained by Appellant's physical therapist on his home exercises and she assists him with them almost daily depending upon his ability.

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 in this case 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. The policy in the Medicaid Provider manual makes it clear that an individual must be financially eligible, functionally eligible, and meet the service dependency for the program. In this case the preponderance of the evidence does not show functional eligibility at the time of the Appellant's reassessment. Therefore, the Appellant has failed to prove that the waiver agency's actions were not proper when it terminated his MI Choice program services.

Based upon the reassessment performed by the waiver agent on [REDACTED], the Appellant was not eligible for MI Choice program at the time they terminated his services.



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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**.



William D. Bond
Administrative Law Judge
for James K. Haveman, 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.