

**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) 373-4147

**IN THE MATTER OF:**

██████████

Appellant

\_\_\_\_\_ /

Docket No. 2013-43027 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 guardian and daughter, appeared and testified on Appellant's behalf. Appellant also appeared and testified.

██████████, Quality and Training Manager, represented the Department's MI Choice Waiver Agency, The ██████████ (Waiver Agency or ██████████). ██████████, Supports Coordinator, appeared as a witness for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly determine that Appellant was no longer eligible for 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 Medicaid beneficiary, born ██████████, who has been enrolled in the MI Choice Waiver Program. (Exhibit A, p 2; Testimony)
2. The Waiver Agency 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. (Exhibit A, Testimony)
3. Appellant is diagnosed with paralysis agitans (Parkinson's disease), COPD, hypertension, arthritis, anxiety, hyperlipidemia, and macular degeneration (legally blind). (Exhibit A, pp 10-11)

4. Appellant lives alone in an apartment. Appellant's husband lives in a nursing facility. Appellant's daughter ██████ is her guardian and lives across the street in the same apartment complex. Appellant's daughter ██████ handles Appellant's finances and Appellant's other children offer support when needed. (Exhibit A, pp 3-6)
5. On ██████, a reassessment of the Appellant was done by the Waiver Agency to determine continued eligibility for the MI Choice Waiver Program. (Exhibit A, pp 2-20)
6. On ██████, the Waiver Agency informed Appellant that she was no longer eligible for the MI Choice Waiver Program. (Exhibit A, pp 30-38; Testimony)
7. On ██████, the Waiver Agency conducted another reassessment after Appellant returned home from a hospitalization. While the Waiver Agency determined that Appellant's had some decline with regard to personal care and bathing, the Waiver Agency still determined that Appellant was not eligible for the MI Choice Waiver Program. (Exhibit A, pp 39-47)
8. On ██████, the Michigan Administrative Hearing System received the Appellant's request for an administrative hearing. (Exhibit 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 (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 is claiming 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 (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)*

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as “medical assistance” under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. 42 CFR 430.25(c)(2)

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

Section 4.1 of the Medicaid Provider Manual Nursing Facilities Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool (Michigan Medicaid Nursing Facility Level of Care Determination, March 7, 2005, Pages 1 – 9 or LOC). The LOC must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004.

The Level of Care 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 MI Choice Waiver services, the Appellant must meet the requirements of at least one Door. The Department presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7.

**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

Appellant reported that she no longer needed any hands on assistance with bed mobility, transfers, toilet use or eating. Appellant reported that she had not needed any such assistance for the past few months. Appellant reported that she only needed

hands on assistance with getting into and out of the car. As such, the Appellant did not qualify under Door 1. (Exhibit A, pp 30-32)

**Door 2**  
**Cognitive Performance**

Scoring Door 2: The applicant must score under one of the following three options to qualify under Door 2.

1. "Severely Impaired" in Decision Making.
2. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."
3. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

Appellant's passed the memory test, she was independent with cognitive skills for daily decision making, and she was usually able to make herself understood. As such, Appellant did not qualify under Door 2. (Exhibit A, pp 32-33)

**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 Physicians Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physicians Order changes in the last 14 days.

Appellant reported no physician's visits or physician change orders within the 14-day period leading up to the LOC Determination. As such, Appellant did not qualify under Door 3. (Exhibit A, pp 33-34)

**Door 4**  
**Treatments and Conditions**

Scoring Door 4: The applicant must score "yes" in at least one of the nine categories above and have a continuing need to qualify under Door 4.

In order to qualify under Door 4 the applicant must receive, within 14 days of the assessment date, any of the following health treatments or demonstrated any of the following health conditions:

- 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

Appellant reported none of the conditions or treatments associated with Door 4. Accordingly, the Appellant did qualify under Door 4. (Exhibit A, p 34)

**Door 5**  
**Skilled Rehabilitation Therapies**

Scoring Door 5: The applicant must have required at least 45 minutes of active ST, OT or PT (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5.

Appellant was not currently receiving any skilled rehabilitation therapies at the time of the assessment. Accordingly, Appellant did not qualify under Door 5. (Exhibit A, pp 34-35)

**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.

Appellant did not have any delusions or hallucinations within seven days of the LOC Determination. Appellant did not exhibit any of the challenging behaviors associated with Door 6 within 4 of the last 7 days prior to the assessment. Accordingly, Appellant did not qualify under Door 6.

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

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

The LOC Determination provides that Appellant could qualify under Door 7 if she is currently (and has been a participant for at least one (1) year) being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility, requires ongoing services to maintain current functional status, and no other community, residential, or informal services are available to meet the applicant's needs.

Here, Appellant is not medically eligible for the MI Choice Waiver Program so she does not require ongoing services to maintain current functional status. Furthermore, the services Appellant may need could be provided through the Care Management Program.

Appellant's daughter testified that Appellant's condition is the same that it has always been. Appellant's daughter testified that her mother doesn't walk well or see well and is always shaking due to her Parkinson's disease. Appellant's daughter admitted that Appellant can get off the toilet by herself, but that it takes her some time. Appellant's daughter testified that Appellant is also having surgery on Friday to remove a cyst and will likely need more assistance following the surgery.

Based on the information at the time of the LOC determination, the Appellant did not meet the Medicaid nursing facility level of care criteria. This does not imply that the Appellant does not need any assistance, only that he was not eligible to receive ongoing services through the MI Choice Waiver at the time the assessment was completed. Accordingly, the Waiver Agency properly determined that the Appellant was not eligible for MI Choice Waiver services.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined that Appellant was not eligible for the MI Choice Waiver Program.

**IT IS THEREFORE ORDERED** that:

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



Robert J. Meade  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

[REDACTED]  
cc:

[REDACTED]

Date Signed: June 26, 2013

Date Mailed: June 26, 2013

**\*\*\* 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.