

**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. 2013-48682 EDW

██████████

██████████

**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 appeared and testified on his own the behalf.

██████████, Assistant Supervisor for the Care Management Department, appeared on behalf of the Department's Waiver Agency ██████████. ██████████ ██████████ LBSW, Social Work Supports Coordinator testified on behalf of the Waiver Agency.

**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 inadvertently enrolled in the MI Choice Waiver Program. (Exhibit A and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
3. On ██████████, Appellant was inadvertently placed in the MI Choice Waiver Program when he finally transitioned from a nursing facility to his home. Appellant was previously presumed to be medically eligible for the

**Docket No. 2013-48682 EDW**  
**Decision and Order**

Waiver Program, due to his physical and medical condition while still in the nursing facility, and a tentative care plan had been put in place. (Exhibit A and testimony).

4. On [REDACTED], [REDACTED] LBSW, Social Work Supports Coordinator and [REDACTED] RN, met with Appellant to do a LOCD to determine Appellant's eligibility for the MI Choice Waiver Program. The Waiver Agents found Appellant did not meet the medical eligibility requirement for the MI Choice Waiver Program. (Exhibit A, Attachment A, and testimony).
5. On [REDACTED], 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, effective [REDACTED]. (Exhibit A, Attachment B and testimony).
6. On [REDACTED], MAHS 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 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)].

**Docket No. 2013-48682 EDW**  
**Decision and Order**

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

**Docket No. 2013-48682 EDW**  
**Decision and Order**

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).

The Waiver Agency provided reliable evidence that on [REDACTED] [REDACTED] LBSW, Social Work Supports Coordinator and [REDACTED] RN, met with Appellant to do a LOCD to determine Appellant's eligibility for the MI Choice Waiver Program. The Waiver Agents found Appellant did not meet the medical eligibility requirement for the MI Choice Waiver Program, (i.e., Appellant did not qualify for functional eligibility through any of the seven doors on the LOCD).

The waiver agents found for Door 1 that the Appellant was independent in bed mobility, transfers, toileting and eating. He needed no assistance within the past seven days. For Door 2 Cognitive Performance Appellant had no difficulty in the past seven days making decision regarding daily activities. For Door 3 Physician Involvement, it was determined Appellant had no physician exams or order changes within the last 14 days. For Door 4 Treatments and Conditions, it was determined the Appellant did not have any of the listed conditions or treatments to qualify under this door. For Door 5 Skilled Rehabilitation Therapies, it was determined Appellant had not received any skilled rehabilitation therapies. For Door 6 Behavior, it was determined that Appellant was not exhibiting any of the listed behaviors within the previous seven days. For Door 7 Service Dependency, Appellant was not eligible under this door because he had not been enrolled in the MI Choice Program for at least one year.

██████████  
**Docket No. 2013-48682 EDW**  
**Decision and Order**

██████████ stated that Appellant was presumed to be eligible while still in the nursing home, and a tentative care plan was prepared for when he would transition out of the nursing home. However, Appellant stayed in the nursing home for an extended period of time and received treatments, his prosthetic leg, and physical therapy prior to his transition home. When he went home on ██████████ the previously prepared care plan was inadvertently put in place before a LOCD was done to determine his medical eligibility for the program. When it was determined Appellant was not medically eligible, he was then advised he did not qualify for the MI Choice Waiver Program. Thereafter, 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, effective ██████████ Appellant was then referred to the DHS Adult Home Help Program where he qualified for services, and the same providers who were providing his MI Choice Services continued providing services under the Home Help Program (HHS).


Appellant testified he has a spend down with his Medicaid under the HHS program. Appellant indicated he filed his appeal because he understood with the MI Choice Waiver Program he would not have a spend down, and with his income through his Social Security Disability payments and even considering his Food Assistance Program allowance, he would be unable to meet the spend down for the HHS program.

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, medically eligible, and meet the service dependency for the program. In this case the preponderance of the evidence does not show medical eligibility at the time of the Appellant's assessment. 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 assessment performed by the waiver agent on ██████████ the Appellant was not eligible for MI Choice program at the time they terminated his services.

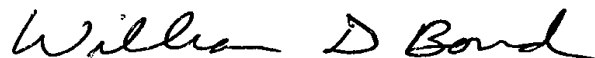
**DECISION AND ORDER**

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.

  
Docket No. 2013-48682 EDW  
Decision and Order

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

Date Signed: 

Date Mailed: 

WDB/db

cc: 

**\*\*\* 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.