

**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:

██████████,

Docket No. 2013-60517 EDW

██████████

██████████

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 ██████████ Appellant's daughter/DPOA ██████████ appeared and testified on behalf of the Appellant. The Appellant also testified on his own behalf.

██████████, Assistance Director, ██████████, appeared on behalf of the Department's Waiver Agency. ██████████, RN, the Nurse Case Manager testified on behalf of the Waiver Agency.

ISSUE

Did the Department's Waiver Agency properly deny Appellant's request for 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, ██████████ who requested enrollment 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 ██████████, LBSW, and ██████████ RN, Social Work and Nurse Case Managers met with Appellant and Appellant's daughter in their apartment to do an initial assessment to determine Appellant's eligibility for the MI Choice Waiver Program. They found the

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Appellant was not medically or functionally eligible for enrollment in the MI Choice Waiver program. Appellant and his daughter were told that the Appellant was not eligible for the MI Choice Waiver program and were advised to consider the Adult Home Help Program with the DHS. (Exhibit A, pp. 3-16 and testimony).

4. On ██████████, MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 1).
5. On ██████████, Appellant was sent an Adequate Action notice advising that his case was being closed effective ██████████ (Exhibit A, p. 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)].

On ██████████, the Department issued MI Choice Operations Advisory Letter #26. The letter states in part:

MI CHOICE CONTRACT REQUIREMENTS

The MI Choice contract requires waiver agents to seek all other forms of payment before authorizing MI Choice services (Attachment K, pp. 43-44).

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The HHS program is another form of payment for home and community based services, and therefore the participant and supports coordinators must fully consider this option **before** MI choice enrollment. MI Choice participants cannot receive services from both the HHS program and MI Choice, as this is a duplication of Medicaid services. (Attachment K, pp. 25-26).

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

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- 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, emphasis added).

* * *

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:

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- 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 ██████████ LBSW, and ██████████, RN, met with the Appellant and Appellant's daughter/DPOA in their apartment to do an initial assessment for the MI Choice Waiver program. ██████████ stated they do an initial assessment that lasts from one to one and a half hours to determine if an individual is eligible for the MI Choice Waiver program. ██████████ stated they do a complete assessment of the individual to evaluate whether the individual is financially and medically or functionally eligible for the program. The Nurse stated the LOCD is a condensed form of the complete assessment that they do when they evaluate an individual.

██████████ stated they asked the Appellant a series of questions to determine if he could complete his ADLs and to determine his general health status. Appellant was found to be independent in his ADLs and he appeared to be in good health. Appellant reported that his last seizure was about ██████████ year ago, and that seemed right since he was on ██████████ seizure medications. The Nurse asked the Appellant to do a few things and determined he could ambulate without any assistive devices. ██████████ stated they did a mental status evaluation and found he was alert, oriented, and he did not appear to have a memory problem. The Nurse advised that according to their assessment the Appellant did not pass the LOCD needed to qualify for the MI Choice Waiver program. She stated the Appellant and his daughter were advised that the Appellant was not medically or functionally eligible for the program and she told them to consider the DHS Adult Home Help program.

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Appellant's daughter testified that the Waiver Agents were not at the apartment that long, and she doesn't believe they did a proper assessment. Appellant's daughter said she wasn't saying they didn't do their job, but she did not think the assessment properly evaluated her father. She alleged that it was only about a 15 minute assessment. Appellant's daughter stated she cooks for the Appellant; that he can barely see. She stated he is in a stage of depression since his wife passed away. Appellant's daughter advised that Appellant's last seizure was at the end of ██████████. She stated that the Appellant needs help and he could not live on his own if she were to move away.

Appellant stated that he really didn't understand the nurse who evaluated him. He said he suffers from seizures and has bad arthritis. He said he needs a hearing aid but can't afford to pay for it. He said he doesn't get around like he used to, and his daughter has to take him everywhere. He said he has to lean on her when he walks. Appellant indicated he does not cook anymore. He said he watches TV and takes medications for his seizures. He said his daughter has to remind him to take his medications at times. Appellant stated he is just asking to get help. He wants to get a medical card, and he wants his daughter to get paid for helping to take care of him.

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly deny him enrollment in the MI Choice Waiver program. 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 denied the Appellant enrollment in the MI Choice program.

The policy in the Medicaid Provider Manual makes it clear that an individual cannot be enrolled in the MI Choice Waiver Program unless the individual meets the functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination. The preponderance of the evidence demonstrates that the Appellant did not meet the functional eligibility based on the assessment completed in this case on ██████████. The Appellant has failed to prove the Waiver Agency's actions were not proper when it denied him enrollment in the MI Choice program.

Based upon the assessment performed by the Waiver Agents on ██████████ the Appellant was not eligible for MI Choice program at the time they denied him enrolment in the program, because he did not meet the functional eligibility requirements for 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 denied Appellant's enrolment in the MI Choice Waiver program.

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IT IS THEREFORE ORDERED that:

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

William D Bond

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc: [REDACTED]

***** 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.