

**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. 2013-66149 EDW

██████████

Appellant

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's daughter, appeared and testified on Appellant's behalf. Appellant also appeared but did not testify. ██████████, RN, CCM Nursing Supervisor, appeared on behalf of the ██████████ ██████████, the Department's MI Choice Program Waiver Agency (██████████ or Waiver Agency). ██████████, LSW, Supervisor and ██████████, Social Worker, Coordinator, appeared as witnesses for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly determine that Appellant was not eligible for the MI Choice Waiver program following completion of a telephone intake screen?

**FINDINGS OF FACT**

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

1. Appellant is a ██████ year female, born ██████████, who was referred for MI Choice Waiver services by ██████████ Services. (Exhibit A, p 4; Testimony)
2. Appellant was hospitalized in ██████████ with pancreatitis and has been at ██████████ ever since. (Exhibit A, p 20; Testimony)
3. 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).

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4. On ██████████ the Waiver Agency received a referral for Appellant from ██████████ Services. A Waiver Agency social worker met with Appellant and her daughter on ██████████ at the facility to complete a telephone intake screen. Following the screening, the social worker determined that Appellant was not eligible for waiver services because she did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit A, pp 6-11; Testimony)
5. On ██████████, Appellant was provided an Adequate Action Notice informing her that she was not eligible for waiver services because she did not meet Nursing Facility Level of Care medical eligibility. (Exhibit A, p 1' Testimony)
6. Appellant's request for a formal, administrative hearing was received by the Michigan Administrative Hearing System on ██████████. (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 eligibility for 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 Medicare Services 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)*

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b))

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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 was noted to be independent with all activities of daily living. As such, Appellant did not qualify under Door 1.

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

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

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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 passed a mini-mental exam administered by the social worker and was noted to have no memory problem, her cognitive skills were noted to be independent and she was able to make herself understood. Therefore, Appellant did not qualify under Door 2.

**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 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.

**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 was noted to have a temporary feeding tube, but it was also noted that Appellant also eats on her own frequently. Accordingly, Appellant did not qualify under Door 4.

**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 reported no speech therapy, occupational therapy, or physical therapy in the 7 days preceding the assessment. Accordingly, Appellant did not qualify under Door 5.

**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 reported no delusions, hallucinations, or any of the specified behaviors within seven days of the LOC Determination. 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 the Appellant could qualify under Door 7 if she or he 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.

Appellant was admitted to the nursing facility in ██████████. Appellant just became eligible for Medicaid and Medicaid began reimbursing the nursing facility for Appellant’s care as of ██████████. As such, Appellant has not been in a Medicaid reimbursed nursing facility for one year, so she did not qualify under Door 7.

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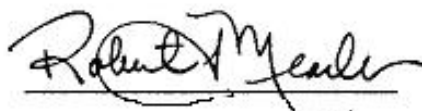
Based on the information at the time of the LOC determination, Appellant did not meet the Medicaid nursing facility level of care criteria. This does not imply that the Appellant does not need any assistance, only that she was not eligible to receive services through the MI Choice Waiver Program at the time the assessment was completed. If Appellant's condition worsens, she can request another assessment. Accordingly, the Waiver Agency properly determined that Appellant was not eligible for MI Choice Waiver services.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED** that:

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



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

CC:

Date Signed: October 24, 2013

Date Mailed: October 24, 2013

**\*\*\* NOTICE \*\*\***

The Michigan Administrative Hearing System for the Department of Community Health 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 for the Department of Community Health 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.