

**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

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Docket No. 2013-67368 EDW

Case No. ██████████

**DECISION AND ORDER**

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

After due notice, an in-person hearing was held on ██████████. Appellant appeared and testified. Appellant was represented by ██████████. ██████████ appeared as a witness on behalf of Appellant.

██████████, Waiver Program Director, appeared on behalf of ██████████, the Department's MI Choice Program Waiver Agency (Waiver Agency, WA, or ██████████). ██████████, Case Manager RN, 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 an eligibility reassessment?

**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 old female, born ██████████. (Exhibit A.1)
2. At all relevant times, Appellant has been an MA DAC beneficiary of the Social Security program.
3. Appellant is blind, had a kidney transplant, needs a walker within her apartment, and needs assistance with instrumental activities of daily living (IADLs). (Appellant Hearing Request) Appellant lives alone in an apartment and has limited informal supports because her family lives over 20 miles away. (Testimony)

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4. On ██████████, the WA made an assessment of Appellant regarding her request for waiver nursing level waiver services. The WA determined that Appellant had needs for shopping, going to the Laundromat and light housekeeping. Appellant did not meet any of the 7 doors criteria for the MI Choice Waiver Program. (Exhibit A.11)
5. On ██████████ the WA issued an Adequate Action Notice informing Appellant that she did not qualify for nursing facility level services based on the Michigan Medicaid Nursing Facility Level of Care Determination. (Exhibit A.10)
6. On ██████████, Appellant filed a hearing request.
7. Since the assessment, Appellant has begun to experience tremors.

**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 Medicaid and Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case, A&D Home Health Care, Inc., 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 Waiver Agency 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

The Waiver Agency's Supports Coordinator testified that based on her assessment, Appellant was independent in bed mobility, transfers, toilet use, and eating. As such, Appellant does 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."

The Waiver Agency's Supports Coordinator testified that 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.

The Waiver Agency's Supports Coordinator testified that 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

The Waiver Agency's Supports Coordinator testified that Appellant initially appeared to qualify under Door 4 because she was receiving her nutrition intravenously via Total Parental Nutrition (TPN) and due to a report of intravenous antibiotics. However, after

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speaking with Appellant's nurses, her pharmacy, and reviewing Appellant's home help logs, it was determined that the nurses were not allowed to assist Appellant with her TPN, that Appellant administers her TPN independently, and that Appellant was not receiving intravenous antibiotics. 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 had not received any speech, occupational, or physical therapy within seven days of the LOC Determination. 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.

No evidence was presented indicating that the Appellant had any 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 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.

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In this case, the Michigan Medicaid Nursing Facility Level of Care Determination tool-the 7 door assessment utilized by the WA and discussed above-does not indicate that Appellant meets nursing facility level services. Clearly Appellant has some needs for assistance in activities that are not considered "hands on" needs. However, such needs do not rise to the level of severity required by the assessment tool.

The purview of an Administrative Law Judge (ALJ) is to review the WA's action at the time the action was taken, and to determine if that action was correct, consistent with the Medicaid Provider Plan, and not contrary to law. This ALJ has reviewed the credible and substantial evidence and finds that the WA's denial is consistent with the tool and policy, and thus, the denial must be upheld.

It is noted that Appellant's tremors, which Appellant indicated are new, were not part of the assessment or evidence at the time the WA made its decision. As such, this ALJ cannot take into account evidence not available at the time the WA made its decision.

It is also noted that Appellant is aware that she may reapply, and/or be eligible for other possible programs and services that do not fall under the waiver program. The Director for the WA who testified at the administrative hearing indicated that she would give this lovely family her personal attention with regards to assisting them with information and referrals.

Based on the information at the time of the LOC determination, Appellant did not meet the Medicaid nursing facility level of care criteria. 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 the Appellant was not eligible for MI Choice Waiver services.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

  /s\    
Janice Spodarek  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

cc: [REDACTED]

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Date Signed: December 12, 2013

Date Mailed: December 13, 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.