

**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. 14-009213 EDW

Case No. [REDACTED]

[REDACTED]  
Appellant  
\_\_\_\_\_ /

**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, a telephone hearing was held on [REDACTED]. Appellant appeared and testified.

[REDACTED], MI Choice Waiver Care Management Director represented the [REDACTED] (Agency) of [REDACTED]. The following individuals appeared as witnesses on behalf of the Agency: [REDACTED], [REDACTED], and [REDACTED].

**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 [REDACTED] year old female who receives Medicaid as a beneficiary under the MA G2 category.
2. On [REDACTED], the Agency made an assessment of Appellant regarding eligibility for the waiver program. Appellant did not meet necessary criteria for any of the 7 Doors.

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3. On ██████████ the Agency issued notice informing Appellant that she did not qualify for the Michigan Medicaid Nursing Facility Level of Care Determination. (Exhibit A.7)
4. On ██████████, Appellant filed a hearing request stating that she requires oxygen.

**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))

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.

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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 evidence indicates that 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.

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."

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The Waiver Agency's evidence indicates that Appellant did not meet hospital or nursing level home care and thus, 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 Care Manager testified that Appellant did not meet criteria for 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 Care Manager's evidence does indicate that Appellant has wound/pressure sores.

**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.

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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.

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.

The purview of an Administrative Law Judge (ALJ) is to review the Agency’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.

Appellant makes two primary arguments: the first is that she should be eligible as she requires oxygen. Appellant presented no evidence that she met the NFLOC requirement for oxygen therapy. Moreover, the Agency testified and observed that Appellant went up two flights of stairs and did not exhibit any respiratory strain.

Appellant’s second argument argues for eligibility on the basis of probable medical conditions Appellant argues that she may have in the future. Specifically, Appellant stated that her COPD will “get progressively worse,” and, that she may need surgery in the future for back problems. Appellant also argues that she should be eligible as she has medical

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conditions she believes are severe, despite being controlled with medication-i.e. colitis, stenosis, depression.

Appellant has the burden of proof. Appellant offered no law or policy that allows for MI Choice eligibility on the basis of possible future medical conditions that “may” develop, and/or problems that do not meet nursing home level of severity when they are controlled with medication.

The evaluation does not show eligibility. The evaluation is supported by credible and substantial evidence of record. The denial is upheld.

**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 Nick Lyon, Director  
Michigan Department of Community Health

JS 

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cc:

[REDACTED]

Date Signed:

[REDACTED]

Date Mailed:

[REDACTED]

**\*\*\* 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.