

**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. 2014-32032 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 the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Appellant did not appear. Appellant was represented by ██████████.

The Department of Community Health's subcontracting Agency-██████████ (██████████ or Agency) was represented by ██████████, Program Manager, ██████████, Clinical Supervisor, and ██████████, Social Worker-Supports Coordinator.

**ISSUE**

Did the Waiver Agency properly determine that the Appellant was not eligible for the MI Choice Waiver program following an eligibility assessment?

**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 an ██████ year old male.
2. ██████████ submitted an evidentiary packet consisting of "8/9" pages the Michigan Medicaid Nursing Facility Level of Care Determination Form issued by the Department of Community Health. No medical evidence was included. (Exhibit A)
3. Appellant's evidentiary packet consists of extensive medical documents.
4. Appellant was on the waiting list for MI Choice services when he was hospitalized and then placed in a nursing home for rehabilitation on ██████████.

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5. On ██████████ ██████████ did an assessment for participation in the MI Choice Waiver Program. ██████████ determined that Appellant was not eligible under any of the 7 doors. Following the eligibility assessment, on ██████████ ██████████ notified Appellant via an Adequate Action Notice that he did not meet the eligibility criteria for participation in the MI Choice Waiver program.
6. On ██████████ Appellant filed a request for an administrative hearing.
7. Medical evidence includes documentation that at the time of the evaluation Appellant was undergoing OT and PT a minimum of 60 minutes per week, and continues to require rehabilitation therapies. The Agency's Exhibit indicates that the therapy was 42 minutes per hour.
8. Medical evidence indicates that Appellant needs the following: ambulation unsteady and unsafe; presented with shoes on the wrong feet; needs assistance for all activities; residual weakness; requires assistance to ambulate; confusion, unable to go out of home alone; needs moderate assistance with ADLs; judgment moderately impaired; fall risk due to impaired cognition and confusion; needs maximum assistance with IADLs; caregiver assistance with bathing; needs assistance with bed-to-chair, dressing, toilet, and bathing.

**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, in this case, the ██████████ functions 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

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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.

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

**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."

**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.

**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

**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.

**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.

**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 Agency’s assessment indicates under Door 5 that Appellant is receiving 42 minutes of OT and PT. Appellant’s medical evidence indicates that Appellant is receiving therapy 2-3 times a week. Each session is an hour. Appellant’s evidence rebuts the Agency’s; while the Agency Exhibit A clearly indicates that therapy(ies) are being received by Appellant, ██████████ failed to submitted its documentation to corroborate the time entered under Door 5, 2 & 3 Fields.

The purview of an administrative law judge is to review the Department’s action and to make a determination as to whether the action was consistent with policy and procedure, and, not contrary to law. The evidence that ██████████ submitted to support the denial cannot be reconciled with the evidence presented by Appellant. Specifically, Appellant’s evidence shows therapy to constitute one hour. Under Door 5, Appellant qualifies if he has “...at least 45 minutes...” The entry of 42 minutes is contrary to Appellant’s evidence. Under general rules of evidence, this ALJ cannot uphold a denial where the evidence of record does not support the action. As already noted, no law, policy, progress notes, or medical evidence was submitted by ██████████; Appellant submitted an extensive medical evidentiary packet. As the decision is not supported by the credible and substantial evidence of the whole record

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the Agency's action must be reversed.

It is also noted that the credible, substantial and copious medical evidence and assessments submitted by Appellant show significant needs and dependence of Appellant. Other than Door 5, the Agency's tool essentially rated Appellant completely independent. The Appellant's evidence credibly and substantially does raise questions regarding the credibility of finding Appellant rated at a 0 considering the medical evidence submitted.

**DECISION AND ORDER**

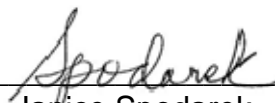
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Waiver Agency did not properly determined that the Appellant was not eligible for MI Choice Waiver services.

**IT IS THEREFORE ORDERED** that:

The Agency's decision is REVERSED.

The Agency is ordered to initiate a reassessment of Appellant under the MI Choice Waiver program.

It is so ORDERED.



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

JS [redacted]

cc: [redacted]

Date Signed: [redacted]

Date Mailed: [redacted]

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**\*\*\* 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.