

**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. 2014-33804 EDW

██████████

██████████

██████████

Appellant

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**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 appeared and testified on the Appellant's behalf.

██████████, Manager, appeared on behalf of the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████ ██████████ RN, Nurse Work Supports Coordinator testified on behalf of the Department of Community Health's (Department) Waiver Agency.

**ISSUE**

Did the Department's Waiver Agency properly reduce Appellant's 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 an ██████-year-old, ██████████), who is enrolled 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. (Testimony).
3. On ██████████, RN, Nurse Supports Coordinator and ██████████, Social Work Supports Coordinator met with Appellant in her home and completed a ██████-day reassessment to determine the

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Appellant's current needs for services in the MI Choice Waiver Program. She completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). ██████████ stated they found the Appellant continued to eligible for the MI Choice Waiver program under Door 1, but determined that her MI Choice Waiver Services should be reduced from █ hours per day, █ days per week to █ hours per day, █ days per week to more accurately reflect the hands-on care needed by the Appellant effective ██████████. Appellant's home delivered meals were also reduced from one meal per day █ days per week to █ meal per day █ days per week. (Exhibits A, B, pp. 2-3, C, G and testimony).

4. On ██████████ MAHS received the Appellant's request for an Administrative Hearing. (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 requested 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)].

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, January 1, 2014, 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).
- 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:

- 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

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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).

\* \* \*

### **2.3.B. REASSESSMENT OF PARTICIPANTS**

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

The Waiver Agency provided evidence that on ██████████, RN, Nurse Supports Coordinator and ██████████, Social Work Supports Coordinator met with Appellant in her home and completed a 90-day reassessment to determine the Appellant's current needs for services in the MI Choice Waiver Program. They completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). ██████████ stated they found the Appellant continued to eligible for the MI Choice Waiver program under Door 1, but determined that her MI Choice Waiver Services should be reduced from █ hours per day, █ days per week to █ hours per day, █ days per week to more accurately reflect the hands-on care needed by the Appellant effective ██████████. Appellant's home delivered meals were also reduced from one meal per day █ days per week to █ meal per day █ days per week.

██████████ stated the Appellant was sent an Advance Action Notice on ██████████ decreasing her services to █ hours per day, █ days per week to █ hours per day, █ days per week, and her home delivered meals were reduced from one meal per day █ days per week to █ meal per day █ days per week effective ██████████

██████████ stated they reviewed the services being provided to the Appellant and determined that the Appellant's plan of care should be reduced as previously indicated, because based on their assessment less time was needed to provide the care that was medically necessary for the Appellant. ██████████ stated that in her professional opinion the new plan of care will provide adequate care to meet the hands-on care needed by the Appellant. She further stated that the █ hours per day █ days per week also provides enough time for the Appellant's caregiver to make at least a couple meals

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per day such that the home delivered meals can be reduced to only █ meal █ days per week.

██████████ concluded that considering the Appellant's care needs, and her available formal and informal supports, the Appellant was receiving adequate Medicaid covered services to meet her current need at the authorized level of █ hours per day, █ days per week, and █ home delivered meals per week. ██████████ noted that the Appellant's daughter had stated that she couldn't give up any service hours because the Appellant must be constantly supervised. Nurse advised that the MI Choice Waiver services only include hands-on care, and does not cover companionship or monitoring for the beneficiary. The Appellant's daughter was given information on Companion Services for which that the Appellant might qualify. (Exhibit A, B, pp. 1, 2 and testimony).

Appellant's daughter testified she was initially told the services were being cut due to budget cuts. Later she received the notice dated ██████████ which stated the cuts were due to their observations of the Appellant's functional and assessed abilities indicating the Appellant did not need the additional services. She said she wanted to know the real reason for the cuts. Appellant's daughter testified she took the Appellant to the doctor in ██████████ and the doctor filled out a medical needs form indicating the Appellant needed assistance with all of her personal care activities. (See Medical Needs form in Exhibit 1).

Appellant's daughter testified that the people from her mother's church may come by to visit but they do not assist with her care. The Appellant has Alzheimer's and dementia and is incapable of doing anything for herself. Appellant's daughter testified that the Appellant's husband who was her guardian became ill and recently passed on ██████████. She stated that only █ out of the Appellant's █ children are able to help with the Appellant's care, but they are employed and must work around their schedules. Appellant's daughter provided a list of daily duties from the Appellant's caregiver, but the sheet does not itemize the amount of time needed to care for the Appellant. (See list contained in Exhibit 1). Appellant's daughter acknowledged that she understood her mother's condition will eventually lead her to a nursing home, but they want to keep her in her home for as long as they can.

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly reduce her MI Choice Waiver services. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver Agency acted properly when it reduced the Appellant's MI Choice Waiver services. Considering assistance the Appellant is receives from informal supports the service hours authorized by the Waiver Agency are sufficient to meet the Appellant's current needs for homemaking and personal care. The MI Choice Waiver program does not cover time for monitoring or supervising an individual beneficiary, the program only covers hand-on assistance with homemaking and personal care needs.

**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 reduced the Appellant's MI Choice Waiver services.

**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: 

Date Mailed: 

WDB/db

cc: 

**\*\*\* 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.