

**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. 2014-34642 EDW

██████████

██████████

Appellant

\_\_\_\_\_ /

**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 ██████████. The Appellant appeared and testified on her own behalf.

██████████, Waiver Manager, ██████████ appeared on behalf of the Department's Waiver Agency. ██████████, RN, Supports Coordinator/Care Manager testified on behalf of the Department's Waiver Agency.

**ISSUE**

Did the Department's Waiver Agency properly deny Appellant's request for 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 requested enrollment in the MI Choice Waiver Program. (Exhibit A, p. 1, Exhibit 2, p. 2 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 for an initial assessment to determine Appellant's eligibility for

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the MI Choice Waiver Program. The Waiver Agents completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). The Waiver Agents found the Appellant was not eligible for the MI Choice Waiver program based on the LOCD. (Exhibit A, Hearing Summary and pp. 1-9 and testimony).

4. On ██████████, Appellant was sent an Adequate Action notice advising her that based on the LOCD she did not qualify for the MI Choice Waiver program. (Hearing summary).
5. 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

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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 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

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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).

The Waiver Agency provided reliable evidence that on [REDACTED], [REDACTED], RN, Nurse Supports Coordinator, and [REDACTED] Social Work Supports Coordinator, met with Appellant in her home for an initial assessment to determine Appellant's eligibility for the MI Choice Waiver program. The Waiver Agents completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). The Waiver Agents found the Appellant was not eligible for the MI Choice Waiver program based on the LOCD.

The Nurse [REDACTED] stated the Appellant was not eligible under Door 1: Activities of Daily Living Dependency. The Appellant was independent with bed mobility, transfers, toileting, and eating. Nurse [REDACTED] stated the Appellant advised that she could toilet herself, and can bathe herself in the shower. Appellant told Nurse [REDACTED] she feeds herself out of a bowl using her fingers. The Appellant was observed transferring herself using a walker. The Appellant was not eligible under Door 2: Cognitive Performance. Her memory was okay, her cognitive skills were modified independent, and she could make herself understood.

Nurse [REDACTED] stated the Appellant was not eligible under Door 3: Physician Involvement. Appellant had no physician visits and no order changes within the past [REDACTED] days. The Appellant was not eligible under Door 4: Treatments and Conditions, because she had none of the treatments and conditions listed under Door 4 within the past [REDACTED] days. Nurse [REDACTED] stated the Appellant was not eligible under Door 5: Skilled Rehabilitation Therapies, because she had not been receiving any skilled therapies in the home within the past [REDACTED] days.

Nurse [REDACTED] stated the Appellant was not eligible under Door 6: Behavioral Challenges. The Appellant did not wander, she was not physically abusive, she was not socially inappropriate, she did not resist care, and it was not verbally abusive. Nurse [REDACTED] also stated the Appellant did not have any delusions or hallucinations. Finally, the Appellant was not eligible under Door 7: Service Dependency, because she had not been a participant in the MI Choice Waiver program or a nursing home resident for over a year.

Nurse [REDACTED] stated based on the LOCD the Appellant was not functionally or medically eligible for the MI Choice waiver program. Nurse [REDACTED] stated the Appellant is in need of services such as personal care and home making, and she is eligible for the Care Management program since she is in need of services and past [REDACTED] years old. Nurse [REDACTED] stated the Appellant is just not eligible for the MI Choice Waiver program.

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Appellant testified that she can't bathe herself and dress herself because she is legally blind. She needs her children to do her laundry and lay out her clothing. Appellant also testified that she was in the hospital after the ██████ assessment was done and had some physical therapy in ██████. She stated she now has blood pressure problems, severe dizziness, and atrial fibrillation. Appellant said she has a breathing machine she uses at home; she has a wheel chair to get around, and also uses a walker and a cane. Appellant said she has been on Warfarin/Coumadin and can't risk falling. Appellant said in ██████ broke her hip and had complications after that and needed physical therapy. Appellant said she was asking for help with her medical bills that piled up after she was in the hospital. She also said her children and granddaughter help when they can, but her children work and can't always help out.

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly deny her enrollment in the MI Choice Waiver program based upon the information the Waiver Agent received at the time of their assessment on ██████. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver Agency acted in accordance with the policy contained in the Medicaid Provider Manual, and its actions were proper when it denied the Appellant enrollment in the MI Choice program.

The policy in the Medicaid Provider Manual makes it clear that an individual cannot be enrolled in the MI Choice Waiver Program unless the individual meets the functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination. The preponderance of the evidence demonstrates that the Appellant did not meet the functional eligibility based on the information the Waiver Agent received at the time of their assessment on ██████. The Appellant presented testimony and documentation of medical problem and conditions that occurred following the ██████ assessment and these matters do not relate back to her condition at the time of the assessment. Accordingly, the Appellant has failed to prove the Waiver Agency's actions were not proper when it denied her enrollment in the MI Choice program.

Based on the information obtained during the assessment performed by the Waiver Agents on ██████, the Appellant was not eligible for MI Choice program at the time she was denied enrollment in the program, because she did not meet the functional eligibility requirements for the program.

**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 denied Appellant's enrollment in the MI Choice Waiver program.

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**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: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc: [REDACTED]

**\*\*\* 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.