

Docket No. 2014-9214 EDW
Decision and Order

MI Choice Waiver Program. They completed a Michigan Medicaid Nursing Facility Level of Care Determination (NF LOCD). They found the Appellant needed Limited Assistance for transfers and marked that Appellant did meet the functional/medical eligibility criteria for Medicaid LTC programs by scoring in Door 1. However, they found that the Appellant was not eligible for the MI Choice Waiver program as they determined she did not have a need for waiver services. (Exhibits A&B and testimony).

4. On [REDACTED], Appellant was sent an Adequate Action notice advising her that based on the NF LOCD she did not qualify for the MI Choice Waiver program. (Exhibit C).
5. On [REDACTED], 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)].

On October 18, 2010, the Department issued MI Choice Operations Advisory Letter #26. The letter states in part:

MI CHOICE CONTRACT REQUIREMENTS

The MI Choice contract requires waiver agents to seek all other forms of payment before authorizing MI Choice services (Attachment K, pp. 43-44). The HHS program is another form of payment for home and community based services, and therefore the participant and supports coordinators must fully consider this option **before** MI choice enrollment. MI Choice participants cannot receive services from both the HHS program and MI Choice, as this is a duplication of Medicaid services. (Attachment K, pp. 25-26).

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2013, 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.

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- 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.

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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 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] SW, and [REDACTED], RN, met with the Appellant in her home to do an initial assessment for the MI Choice Waiver program. [REDACTED] stated they completed a Michigan Medicaid Nursing Facility Level of Care Determination (NF LOCD). [REDACTED] stated they determined that the Appellant needed Limited Assistance with transfers and they marked on the NF LOCD that the Appellant did qualify through Door 1.

Based upon their discussions with the Appellant during the [REDACTED] assessment, the Waiver agency concluded that the Appellant was not eligible for enrollment in the MI Choice Waiver program. They found that Appellant needed intermittent assistance with transfers, but at the time of the assessment she had informal supports (a friend who she could call) to assist with transfers. They were also left with the understanding that the Appellant was taking care of her disabled mother who recently moved in with the Appellant. However, Appellant indicated to them she was uncertain whether she would be able to take care of her mother in the future as she had done in the past. Based on this information, they determined that the Appellant did not have a need for services if she was able to take care of her mother and had informal supports she could call on when she needed assistance.

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It should also be noted that while the Waiver Agents marked on the NF LOCD that Appellant was eligible for the Waiver Program through Door 1, the score she should have received for Door 1 by them marking Limited Assistance for transfers according to the instructions on page 3 of 9 of Exhibit B was 3. This would give Appellant only 3 points under Door 1, which requires a score of 6 to qualify under Door 1. Following the instructions, the Waiver Agents should not have qualified the Appellant under Door 1. This is consistent with the Adequate Action notice sent to the Appellant on [REDACTED], advising her that based on the NF LOCD she did not qualify for the MI Choice Waiver program under any of the eligibility categories including Activities of Daily Living (Door 1).

Appellant testified she believed there was confusion with [REDACTED]. Appellant testified that she does not care for her mother; there is a person who comes in [REDACTED] to [REDACTED] days per week for [REDACTED] to [REDACTED] hours per day to take care of her mother and to provide needed chores such as laundry. Appellant acknowledged that she does have a friend who helps her, but he lives far enough away that he can't always come and help her. Appellant also acknowledged that she did tell the Waiver Agents she used to care for her mother in the past, but did not think she can care for her like she did before. Appellant testified that the person who cares for her mother was not at her home on the day of the assessment.

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. 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, or if she does not need waiver services and her needs can be met by informal supports or other available services. The preponderance of the evidence demonstrates that the Appellant did not meet the functional eligibility based on the information the Waiver Agent's received at the time of their assessment on [REDACTED], and did not need waiver services. The Appellant has failed to prove the Waiver Agency's actions were not proper when it denied her enrollment in the MI Choice program.

The Waiver Agents indicated during the hearing that based on the information contained in the Appellant's request for hearing and the Appellant's testimony at the hearing that they need to do a new assessment to determine if the Appellant is in need of and eligible for Waiver services.

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Based on the information obtained during the assessment performed by the Waiver Agents on [REDACTED], the Appellant was not eligible for MI Choice program at the time they denied her enrollment in the program, because she did not meet the functional eligibility requirements for the program and it was not established that she was in need of Waiver services.

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.

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.