

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
**FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
P.O. Box 30763, Lansing, MI 48909  
Phone: (877)-833-0870; Fax: (517) 373-4147

**IN THE MATTER OF:**

**Docket No.** 15-014007 MHP

██████████

██████████

██████████

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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared on his own behalf and offered testimony. ██████████ R.N., Clinical Manager appeared and offered testimony on behalf of ██████████ (Agency). ██████████ R.N., Supports Coordinator and ██████████, Social Worker appeared as witnesses for the Agency.

**ISSUE**

Did the Waiver Agency properly determine that Appellant was not eligible for the MI Choice Waiver Program?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year old Medicaid beneficiary, born ██████████. (Exhibit A, p 34)
2. The Agency is a contract agent of the ██████████ (██████████) and is responsible for waiver eligibility determinations and the provision of MI Choice Waiver Services.
3. As of ██████████, the Appellant was enrolled with the MI-Choice Waiver Program. (Testimony)
4. On ██████████, the Agency visited the Appellant to conduct a regularly scheduled 180 day reassessment. At the conclusion of the assessment, it was determined the Appellant did not medically qualify for the MI-Choice Waiver Program. (Exhibit A, pp 2-33; Testimony)

5. On ██████████, the Agency sent Appellant an Advance Action Notice informing Appellant that it was determined he was not eligible for the MI Choice Waiver Program. (Exhibit A, p 2, 55; Testimony)
6. On ██████████, the Agency informed the Appellant of other programs that he could utilize. (Exhibit A, p 37; Testimony)
7. On ██████████, the Michigan Administrative Hearing System received Appellant's request for an administrative hearing. (Exhibit A, p 56)

### **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 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 (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)*

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as "medical assistance" under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. *42 CFR 430.25(c)(2)*

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, October 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

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).

In order to be found eligible for MI Choice Waiver services, Appellant must meet the requirements of at least one Door. The Department presented testimony and documentary evidence that 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 Appellant reported to be in poor health and that he continued to suffer from multiple falls yet was observed walking outdoors without shoes; climbing stairs without assistance; picking up and straightening a rug; opening medication bottles; rolling cigarettes; punching microwave buttons; signing paperwork and to generally have good agility, strength, and stamina. Appellant was found to be independent with bed mobility, transfers, toilet use and eating. As such, Appellant did 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."

Appellant reported occasional memory problems and indicated that he has no difficulty making decisions or making himself understood. As such, Appellant 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.

Appellant reported 0 physician's visits and 0 physician change orders within the 14-day period leading up to the LOC Determination. As such, Appellant did not qualify under 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

Appellant reported none of the conditions or treatments associated with Door 4. Accordingly, Appellant did qualify under Door 4.

**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.

Appellant was not currently receiving any skilled rehabilitation therapies at the time of the assessment. 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.

Appellant did not have any delusions or hallucinations and did not exhibit one of the challenging behaviors associated with Door 6 within the 7 days prior to the assessment. 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.

The LOC Determination provides that Appellant could qualify under Door 7 if he is currently (and has been a participant for at least one (1) year) being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility, requires ongoing services to maintain current functional status, and no other community, residential, or informal services are available to meet the applicant's needs.

Here, Appellant had been a participant in the Waiver Program for at least one year, but there were other services available in the community that could meet the Appellant's

needs. The Appellant's primary area of need was transportation and there are transportation options in the Appellant's community available to him. In addition to the transportation, the Appellant lived with a significant other. The significant other is considered an informal support and someone who can assist the Appellant with some of his informal needs. As such, the Appellant does not qualify under Door 7.

The Appellant argued he needed help and suffered from occasional seizures resulting in blackouts.

Based upon the records provided, there was little information outside of the Appellant's own comments that indicated there was an issue with seizures and little to no evidence to indicate that the Appellant was affected by these seizures to the point that it would necessitate MI Choice services.

Based on the information available at the time of the LOC determination, Appellant did not meet the Medicaid nursing facility level of care criteria. This does not imply that Appellant does not need any assistance, or that he does not have any medical problems, only that he was not eligible to receive ongoing services through the MI Choice Waiver Program at that time of the assessment. Accordingly, the Waiver Agency properly determined that Appellant was not eligible for MI Choice Waiver services.

Appellant did not prove by a preponderance of evidence that the Waiver Agency erred in finding that he was not eligible for the MI Choice Waiver Program. Therefore, Appellant is not eligible for the MI Choice Waiver Program.

### **DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.



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Corey Arendt  
Administrative Law Judge  
for Director, Nick Lyon  
Michigan Department of Health and Human Services

Date Mailed: [REDACTED]  
Date Mailed: [REDACTED]

[REDACTED]  
Docket No. 15-014007 EDW  
Decision and Order

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[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. 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.