

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909  
(517) 373-0722; Fax: (517) 373-4147

**IN THE MATTER OF:**

**MAHS Docket No. 15-022762 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.*, and upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████ ██████████ and ██████████ ██████████, Appellant's son and daughter-in-law, appeared and testified on Appellant's behalf. Appellant and ██████████, Appellant's niece, also testified as witnesses for Appellant. ██████████, Director of Care Management, appeared and testified on behalf of the Department of Health and Human Services' Waiver Agency, the ██████████ ("Waiver Agency" or ██████████

**ISSUE**

Did the Waiver Agency properly deny Appellant's request for services through 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 seventy-four-year-old nursing facility resident who applied for waiver services with ██████████ through the MI Choice Waiver Program. (Exhibit B, page 1; Testimony of Respondent's representative).
2. On ██████████ staff performed a Level of Care Determination (LOCD) with Appellant. (Exhibit B, pages 1-9).
3. Appellant passed through Door 5 of the LOCD based on the amount of occupational and physical therapy she was receiving. (Exhibit A, pages 7-8).

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4. However, ██████ advised her that she did not meet the functional eligibility for services. (Exhibit B, pages 8-9).
5. That same day, ██████ also sent Appellant written notice that her request for services was denied because she did not qualify for nursing facility level services by passing through all of the seven eligibility categories. (Exhibit A, page 1).
6. On ████████████████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter regarding that denial. (Exhibit 1, pages 1-7).

**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. 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.

Appellant is seeking services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid to the Michigan Department of Health and Human Services. Regional agencies, in this case AAA, 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 Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, with respect to functional eligibility, the applicable version of the MPM states in part:

## **2.2 FUNCTIONAL ELIGIBILITY**

The MI Choice waiver agency must verify an applicant's medical/functional eligibility for program enrollment by inputting a valid Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) into the online LOCD application. A valid LOCD is defined as an LOCD that was completed in-person with the applicant according to MDCH policy and put in the online LOCD application within 14 calendar days after the date of enrollment into the MI Choice program. (Refer to the Directory Appendix for website information.) The LOCD is discussed in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter. Additional information can be found in the Nursing Facility Coverages Chapter and is applicable to MI Choice applicants and participants.

The applicant must also demonstrate a continuing need for and use of at least two covered MI Choice services, one of which must be Supports Coordination. This need is originally established through the Initial Assessment using the process outlined in the Need for MI Choice Services subsection of this chapter.

### **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 person completing the LOCD must either be waiver agency staff or in the waiver agency's provider network.

The online version of the LOCD must be completed within 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.

Copies of the LOCD for participants must be retained by the waiver agency for a minimum period of six years. This information is also retained in the MDHHS LOCD database. For individuals who do not meet the LOCD criteria, a paper copy of the LOCD must be retained in the applicant's record for no less than three years.

*MPM, October 1, 2015 version  
MI Choice Waiver Chapter, pages 1-2*

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Here, the Waiver Agency denied Appellant's request for services on the basis that she did not meet the above functional eligibility for the program.

However, the LOCD clearly and undisputedly demonstrates that Appellant passed through Door 5 and that she therefore met the functional eligibility criteria outlined in the above policy. As provided above, an applicant qualifies for functional eligibility by passing through any one of seven doors.

In response, the Waiver Agency argues that Door 5 is just a temporary door and that Appellant will not meet the above criteria when her occupational and physical therapy ends.

However, the above policy does not identify any of the seven doors as temporary or support any such determination as a basis for denying an applicant. Instead, it expressly provides that an applicant must meet the functional eligibility criteria through one of the seven doors. Appellant does so in this case and she should have therefore been approved.

All participants must continue to meet the level of care criteria on a continuing basis, but that does not mean that the Waiver Agency can deny a request from an applicant who currently meet the functional eligibility requirements on the basis that she may not meet it subsequently. Accordingly, the Waiver Agency erred in this case and its decision must be reversed.

**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 improperly denied Appellant's request for services.

**IT IS THEREFORE ORDERED** that:

The Waiver Agency's decision is **REVERSED**.

*Steven Kibit*

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Steven J. Kibit  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Health and Human Services

Date Mailed: [REDACTED]

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cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[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.