



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: January 12, 2017  
MAHS Docket No.: 16-015179  
Agency No.: 0  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

After due notice, a hearing was held on December 14, 2016. [REDACTED] sister and Authorized Hearing Representative (AHR), appeared on behalf of the Petitioner. [REDACTED], the Petitioner, was also present. [REDACTED], Registered Nurse (RN) Special Project and Training Manager, represented the Department of Health and Human Services' Waiver Agency, [REDACTED] or "Waiver Agency").

During the hearing proceedings, the Waiver Agency's Hearing Summary packet was admitted as Exhibit A, pp. 1-42; and Petitioner's documents were admitted as Exhibit 1, pp. 1-3.

**ISSUE**

Did the Waiver Agency properly determine that Petitioner was not eligible for MI Choice Waiver services because the Petitioner did not meet the Nursing Facility Level of Care Determination (LOCD) criteria?

**FINDINGS OF FACT**

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

1. On or about [REDACTED], the Waiver Agency received a referral for Petitioner for the MI Choice Waiver program. An initial screening was completed, Petitioner was found to be potentially eligible for the program and was placed on a waiting list. (Exhibit A, pp. 34-42)

2. On [REDACTED], a LOCD was completed as part of the enrollment determination. Petitioner was found to not meet any of the Doors for the LOCD. (Exhibit A, pp. 3-10; RN Special Project and Training Manager Testimony)
3. On [REDACTED] an Adequate Action Notice was issued to Petitioner indicating she was not eligible for the MI Choice Waiver program at that time. (RN Special Project and Training Manager Testimony)
4. On [REDACTED], Petitioner and her sister filed a hearing request contesting the Waiver Agency's determination. (Hearing Request)

### **CONCLUSIONS OF LAW**

The Medical Assistance Program (MA) 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.

Petitioner 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 Respondent, 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)*

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b))

Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. In accordance with the federal regulations the

Michigan Department of Health and Human Services implemented functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services.

MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). The LOCD consists of seven screening Doors. The doors are: Door 1- Activities of Daily Living; Door 2-Cognitive Performance; Door 3- Physician Involvement; Door 4- Treatments and Conditions; Door 5- Skilled Rehabilitative Therapies; Door 6- Behavioral Challenges; and Door 7- Service Dependency. 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. *Medicaid Provider Manual, MI Choice Waiver Chapter, October 1, 2016, pp. 1-2.*

In order to be found eligible for MI Choice Waiver services, the Petitioner must meet the requirements of at least one Door.

### Door 1

#### Activities of Daily Living (ADLs)

The LOCD, pages 1-3 of 9, provides that the Petitioner must:

**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

### Door 2

#### Cognitive Performance

The LOCD, pages 3-4 of 9, provides that to qualify under Door 2 Petitioner must:

**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."

### **Door 3** **Physician Involvement**

The LOCD, pages 4-5 of 9, provides that to qualify under Door 3 Petitioner must:

**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 Physician Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physician Order changes in the last 14 days.

### **Door 4** **Treatments and Conditions**

The LOCD, page 5 of 9, indicates that in order to qualify under Door 4, the Petitioner 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

**Scoring Door 4:** The applicant must meet score "yes" in at least one of the nine categories and have a continuing needs to qualify under Door 4.

**Door 5**  
**Skilled Rehabilitation Therapies**

The LOCD, pages 5-6 of 9, provides that the Petitioner must:

**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.

**Door 6**  
**Behavior**

The LOCD, pages 6-7 of 9, provides a listing of behaviors (Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, and Resists Care) and problem conditions (Delusions, and Hallucinations) recognized under Door 6.

**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.

**Door 7**  
**Service Dependency**

The LOCD, page 7 of 9, provides that Petitioner could qualify under Door 7 if there was evidence that she: is currently being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility; for at least one year; requires ongoing services to maintain current functional status; and no other community, residential or informal services are available to meet the Petitioner's needs.

In this case, on [REDACTED] an LOCD was completed as part of the enrollment determination. Petitioner was found to not meet the criteria for any of the Doors for the LOCD at that time. (Exhibit A, pp. 3-10; RN Special Project and Training Manager Testimony)

Petitioner's ARH testified that it was unfortunate she was not with Petitioner for the [REDACTED], LOCD, although another sister was. Petitioner has had two strokes, and one affected her more cognitively than physically. So some of the problems that Petitioner has are not very evident, even to Petitioner. Under Door 2, there was no disagreement that Petitioner has a memory problem, but the AHR would have scored

Petitioner as moderately or severely impaired for cognitive performance. The AHR explained that if asked Petitioner would answer that she is doing these things, but in reality Petitioner is not. For example, regarding eating Petitioner would have responded that she is eating on a regular basis, but there is evidence that Petitioner is not. Similarly, for Door 6, Petitioner's AHR would have scored Petitioner as a 3 for wandering and socially inappropriate/disruptive. However, Petitioner's AHR agreed that the LOCD was scored consistently with how Petitioner would have responded during the evaluation. (AHR Testimony; See Exhibit A, pp. 3-10)

It was also noted that as of a [REDACTED], discussion, the rehab center is switching Petitioner over from occupational rehab to the psychiatric and Petitioner is being sent for a neuropsychological evaluation to try to help determine where Petitioner is at cognitively. (AHR Testimony)

The RN Special Project and Training Manager indicated that Petitioner has remained on care management with the Waiver Agency, and is due to be seen shortly for re-evaluation. The Waiver Agency, with the permission given by Petitioner during the telephone hearing, indicated they would contact Petitioner's AHR to involve her in the re-evaluation. (RN Special Project and Training Manager Testimony)

The evidence establishes that Petitioner did not meet the criteria for any of the seven Doors at the time the [REDACTED], LOCD was completed, based on the information reported to the Waiver Agency at that time. Accordingly, Petitioner was not eligible for the MI Choice Waiver program based on the [REDACTED] LOCD completed by the Waiver Agency.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied MI Choice Waiver services for Petitioner because she did not meet the LOCD criteria.

**IT IS THEREFORE ORDERED** that

The Department's decision is AFFIRMED.

CL/cg



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**Colleen Lack**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

**DHHS -Dept Contact**

[REDACTED]

**Community Health Rep**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]

**Petitioner**

[REDACTED]