



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: February 24, 2017  
MAHS Docket No.: 16-017428  
Agency No.: [REDACTED]  
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 February 25, 2017. [REDACTED], the Petitioner, appeared on his own behalf. [REDACTED], Adult Protective Services (APS) Worker, appeared as a witness for Petitioner. [REDACTED], Social Worker Supports Coordinator, represented the Department of Health and Human Services' Waiver Agency, [REDACTED] ("Waiver Agency"). [REDACTED], Registered Nurse (RN), Associate Director of Clinical Operations, appeared as a witness for the Waiver Agency.

During the hearing proceeding, the Waiver Agency's hearing summary packet was admitted as Exhibit A, pp. 1-3; and Petitioner's Hearing Request was admitted as Exhibit 1, pp. 1-4.

**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 [REDACTED], a LOCD was completed as part of the MI Choice Waiver program enrollment determination. Petitioner was found to not meet any of the Doors for the LOCD. (Exhibit A, pp. 1-3; Exhibit A, p. 4; Supports Coordinator Testimony)

2. On [REDACTED], an Adequate Action Notice was issued to Petitioner indicating he was not eligible for the MI Choice Waiver program based on the LOCD. (Exhibit 1, p. 2)
3. On [REDACTED], Petitioner's hearing request was received by the Michigan Administrative Hearing System. (Exhibit A, pp. 1-4)

### **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 of the LOCD. *Michigan Department of Health and Human Services, Michigan Medicaid Nursing Facility Level of Care Determination, September 2015, pp. 1-8.*

### **Door 1**

#### **Activities of Daily Living (ADLs)**

The LOCD, pages 1-3 of 8, 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

Petitioner was scored as independent with each of the four ADLs considered under Door 1 for the seven day lookback period for this Door. Petitioner was able to demonstrate for the Waiver Agency's RN and Social Worker Supports Coordinator that he was able to get up off the couch independently, which is where he sleeps and spends most of his time. Petitioner reported he did not receive any assistance with transfers in the last seven days. Similarly, Petitioner demonstrated that he was able to get off the toilet on his own. Petitioner reported some difficulties with changing his underwear, but denied receiving assistance from others within the last seven days. Petitioner reported he is able to feed himself. (Exhibit A, p. 2; Supports Coordinator Testimony)

Petitioner testified that he had issues with being able to change. However, Petitioner acknowledged that he was independent that week. (Petitioner Testimony)

There is sufficient credible evidence that Petitioner was independent with the four ADLs considered under Door 1 at the time of the [REDACTED], assessment. Accordingly, it cannot be found that the Waiver Agency erred in determining that Petitioner scored 4 points, which is not sufficient to qualify through Door 1.

## Door 2 Cognitive Performance

The LOCD, pages 3-4 of 8, 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."

Petitioner was scored as not having a short term memory problem, independent with cognitive skills for daily decision making, and able to make himself understood. Petitioner lives on his own and is able to make his own day to day decisions. Petitioner does not have a legal guardian or durable power of attorney. Petitioner was clear in expressing himself and they were able to understand him during the assessment. Petitioner did not have any diagnoses indicating dementia or another memory issue. Petitioner did not appear to have any problems with short term memory during the assessment. (Exhibit A, p. 2; Supports Coordinator Testimony)

The APS Worker testified that Petitioner reported to her that he had a brain injury as a child. The APS Worker thought this would automatically qualify Petitioner. (APS Worker Testimony)

A history of a brain injury itself does not allow for an individual to automatically qualify through Door 2. Rather, it would depend on how the brain injury affects functioning. (Supports Coordinator Testimony) In this case, there was no evidence presented that the Waiver Agency erred in scoring Petitioner as not having a short term memory problem, independent with cognitive skills for daily decision making, and able to make himself understood. Accordingly, Petitioner did not qualify through Door 2.

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

The LOCD, pages 4-5 of 8, 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.

Petitioner was scored as not having any physician visit exams or order changes within the 14 day lookback period for this Door. During the assessment, Petitioner reported he had not been to his physician since the beginning of September 2016 and had not had any order changes in the last two weeks. (Exhibit A, p. 2; Supports Coordinator Testimony)

Petitioner testified that he thought he went to the wound clinic on [REDACTED]. However, the APS Worker testified that she shows his last appointment at the wound clinic was [REDACTED]. (Petitioner and APS Worker Testimony)

Overall, the evidence presented does not establish that Petitioner had any days with physician visit examinations or days with physician order changes during the relevant 14 day review period. Accordingly, Petitioner did not meet the criteria to qualify through Door 3.

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

The LOCD, page 5 of 8, 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.

Petitioner was scored as no for each of the listed health conditions and treatments. It was explained that Petitioner did have some foot ulcers, but they were at stage 2; he was not currently receiving any skilled services to care for them; and they did not affect Petitioner’s ability to carry out his ADLs. The RN that went to the assessment looked at the ulcers. Further, Petitioner reported that the wounds were not caused by pressure, rather, they were from circulation issues and they were stage 2. (Exhibit A, p. 2; Supports Coordinator Testimony)

Petitioner testified that at one point the wounds were infected and open, he needed help, but he could not get any at the time. It was also noted that at one time Petitioner did have a nurse coming out once per week. (Petitioner and APS Worker Testimony)

The Supports Coordinator testified that that the skilled nursing service for Petitioner had ended on [REDACTED]. At the time of the [REDACTED] assessment, Petitioner only had a caregiver through APS that was coming in 3-4 times per week to assist with the wounds and housekeeping. (Exhibit A, p. 2; Supports Coordinator Testimony)

There were no disagreements regarding the other listed health conditions and treatments for the relevant two week look back period for this Door. (Petitioner and APS Worker Testimony)

Overall, the evidence presented does not establish that Petitioner received any of the specified treatments or demonstrated any of the specified health conditions during the relevant time period to meet the criteria for Door 4 for the [REDACTED], LOCD assessment. Accordingly, Petitioner did not meet the criteria to qualify through Door 4.

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

The LOCD, pages 5-6 of 8, 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.

The Waiver Agency scored Petitioner as not requiring any minutes of physical, occupational, or physical therapy during the relevant time period. (Exhibit A, p. 2; Supports Coordinator Testimony)

The APS Worker testified that Petitioner is in it now. (APS Worker Testimony)

Accordingly, no evidence was presented indicating that any skilled rehabilitation therapies were scheduled or delivered for Petitioner during the relevant time period to meet the criteria for Door 5 for the October 20, 2016, LOCD assessment.

### **Door 6** **Behavior**

The LOCD, pages 6-7 of 8, 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.

It was uncontested that Petitioner did not display any of the listed behavioral symptoms or problem conditions during the relevant time period for the October 20, 2016, LOCD assessment to qualify through Door 6.

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

The LOCD, page 7 of 8, provides that Petitioner could qualify under Door 7 if there was evidence that he: 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, Petitioner could not be found to qualify through Door 7 because he had not been served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility for at least one year. (Exhibit A, p. 2; Petitioner, APS Worker, and Supports Coordinator Testimony)

There is an exception review process related to the LOCD. However, in this case, the testimony of the parties did not establish that an exception review was requested through the Michigan Peer Review Organization (MPRO).

Accordingly, the evidence established that Petitioner did not meet the criteria for any of the seven Doors at the time the [REDACTED], LOCD was completed and no exception review was requested. Therefore, Petitioner was 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 denied MI Choice Waiver services for Petitioner because he 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

**Community Health Rep**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**Petitioner**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]