



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: March 9, 2017  
MAHS Docket No.: 17-000499  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**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 the Petitioner's request for a hearing.

After due notice, a hearing was held on March 7, 2017. Petitioner [REDACTED], his Authorized Hearing Representative [REDACTED] and his friend [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Hearing Officer and [REDACTED], Support Coordinator; and [REDACTED] RN support Coordinator represented [REDACTED] [REDACTED]. ([REDACTED] or Respondent) on behalf of the Department of Health and Human Services (Department).

Respondent's Exhibit a pages 1-72 were admitted as evidence.

**ISSUE**

**FINDINGS OF FACT**

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

1. Petitioner is a Medicaid beneficiary, born [REDACTED]. Petitioner is [REDACTED] years old.
2. The Respondent Waiver Agency is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice Waiver Services.
3. On [REDACTED], Petitioner was admitted to the Medicaid waiver program and Medicaid waiver services because he qualified for services through door five and was expected to continue after he returned home.

4. Petitioner had been receiving Medicaid waiver services because he qualified through Door Five. He was receiving physical therapy and occupational therapy on a temporary basis.
5. On [REDACTED], a reassessment was done on Petitioner's case because Petitioner had been discharged from both physical therapy and occupational therapy a month before.
6. On [REDACTED] an adequate action notice was sent to Petitioner from [REDACTED] stating: *following a review of your long-term care needs, it has been determined that you do not qualify for MI Choice program services based on the Michigan Medicaid nursing facility level of care determination. You did not qualify under any of the following eligibility categories: activities of daily living, cognition, physician involvement, treatments and conditions, skilled rehabilitative therapies, behavior, or service dependencies. The legal basis for this decision is 42 CFR 440.230(d).* (Respondent's Exhibit A page 3)
7. On [REDACTED], the Michigan Administrative Hearing System received a request for hearing to contest the cancellation of Medicaid waiver services.

### **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 Petitioner 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*, April 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, Petitioner must meet the requirements of at least one Door. The Department presented testimony and documentary evidence that Petitioner 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

Petitioner was found to be independent with bed mobility, transfers, toilet use and eating. At the assessment, petitioner was able to get into bed, turned aside unassisted. He was even encouraging his dog to get into bed while he attempted repositioning. He is able to ambulate with the use of two canes. He is a slow gait. He was asked to transfer on offer toilet and was able to do so independently. He refused to transfer to the shower bench and states that he only takes sponge bath since he returned home. He would be able to clean himself after a bowel movement. He reported that he is able to feed himself and make himself cereal, sandwiches and freezer meals. As such, Petitioner 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."

Petitioner passed the memory test, he was independent with cognitive skills for daily decision making, and he was able to make himself understood. As such, Petitioner 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.

Petitioner reported physician's visits twice in the last two weeks but has not had physician change orders within the 14-day period leading up to the LOC Determination. As such, Petitioner 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

Petitioner reported none of the conditions or treatments associated with Door 4. Accordingly, Petitioner 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.

Petitioner was not currently receiving any skilled rehabilitation therapies at the time of the assessment. Accordingly, Petitioner 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.

Petitioner did not have any delusions or hallucinations within seven days of the LOC Determination. Petitioner did not exhibit any of the challenging behaviors associated with Door 6 within 4 of the last 7 days prior to the assessment. Accordingly, Petitioner 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 Petitioner could qualify under Door 7 if she 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, Petitioner has not been a participant in the Waiver Program for at least one year, so he did not qualify under Door 7.

Petitioner testified that he still needs help with activities of daily living. He has poor eyesight, stenosis, arthritis and instability problems. He needs more than the Veterans Administration involvement in his care. He needs transportation and community resources. He continues to need the MI Choice Waiver Program services.

The Waiver agency indicated that if Petitioner was found to be no longer eligible for the Waiver program, he may be eligible to receive Home Help Services through the Michigan Department of Health and Human Services, if needed.

Based on the information at the time of the LOC determination, Petitioner did not meet the Medicaid nursing facility level of care criteria. This does not imply that Petitioner does not need any assistance, only that he was not eligible to receive ongoing services through the MI Choice Waiver at the time the assessment was completed. Accordingly, the Waiver Agency properly determined that Petitioner was no longer eligible for MI Choice Waiver services.




**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED** that:

The Department's decision is **AFFIRMED**.

LL/sb



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Landis Lain  
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]

**DHHS -Dept Contact**

[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]

**Petitioner**

[REDACTED]