

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

Docket No. 2009-16436 EDW

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED] was represented by [REDACTED], at hearing. [REDACTED] for [REDACTED], a [REDACTED], represented the Department's waiver agency ([REDACTED]). [REDACTED], appeared as a witness for [REDACTED].

ISSUE

Did [REDACTED] properly determine the Appellant was no longer eligible for the MIChoice Waiver?

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary enrolled in the MIChoice Waiver.
2. The Appellant has been enrolled in the MIChoice Waiver in excess of [REDACTED].
3. The Appellant is an [REDACTED] with macular degeneration, diabetes, hernia and thyroid problems. She is blind in one eye.
4. [REDACTED] is a contract agent of the Michigan Department of Community Health (MDCH)

(MDCH) and is responsible for waiver eligibility determinations and the provision of MIChoice Waiver services.

5. Effective [REDACTED], the MDCH Medical Services Administration (MSA) Medicaid Provider Bulletin 04-15 required all current MIChoice Waiver recipients to be reassessed using the MDCH approved Level of Care Assessment Tool. (Exhibit 1 Pages 2-7).
6. On [REDACTED], [REDACTED] staff completed an assessment using the approved MDCH Level of Care Determination Tool. (Exhibit A Pages 16-22).
7. [REDACTED] staff determined that the Appellant remained eligible for MIChoice Waiver services on the assessment, as indicated on Exhibit A Page 13. The Appellant enters through Door 1, scoring a 6.
8. [REDACTED] witness testified the LOC determination tool was not controlling and the determination as indicated on page 13 had been changed. The witness asserted the Appellant is not eligible for nursing home level of care, thus is no longer eligible for MIChoice Waiver services.
9. On [REDACTED], MDCH received the Appellant's request for an administrative hearing.

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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MIChoice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements. The Medicaid Provider Manual, Coverages and Limitations Chapter, Nursing Facilities Section, April 1, 2006, lists the policy for admission and continued eligibility process as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MIChoice, and PACE services.

Section 4.1 of the Medicaid Provider Manual Nursing Facilities Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool (*Michigan Medicaid Nursing Facility Level of Care Determination, March 7, 2006, Pages 1 – 9 or LOC*). The LOC must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MIChoice or PACE on and after November 1, 2004.

The Level of Care Assessment Tool consists of seven service entry Doors. The doors are: Activities of Daily Living, Cognition, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependency. In order to be found eligible for Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door.

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

Michigan Medicaid Nursing Facility
Level of Care Determination Tool

[REDACTED] provided evidence that on [REDACTED], it completed the Michigan Medicaid Nursing Facility Level of Care Determination (LOC) to determine if the Appellant met criteria for the MIChoice Waiver Program. The [REDACTED] witness testified that with regard to the Appellant's ADLs the Appellant was independent in Bed Mobility, independent in Toileting Use, and independent in Eating. She requires limited assistance in Transfers. The assessment results in a score of 6 for Door 1. The LOC at page 3 of 9 provides that the Appellant must score at least six points to qualify under Door 1.

The [REDACTED] witness asserted that despite scoring a 6 at Door 1 of the tool, the Appellant was determined no longer eligible for nursing facility level of care, thus ineligible for MIChoice Waiver services. She did not dispute the Appellant scored a 6, nor did she dispute that the score of 6 is the score needed to qualify for nursing facility level of care, as per the written criteria. She asserted the tool itself is not controlling, rather "their assessment" was the controlling authority. She further asserted the Appellant's needs could be met through use of DHS Home Help Services.

The Appellant's Door 1 point total was 6 points. Therefore, the [REDACTED] witness is wrong

when she asserts the Appellant does not meet nursing facility level of care criteria. The LOC is not advisory, it is compulsory. The [REDACTED] witness is wrong asserting the LOC is not controlling. The [REDACTED] witness has no policy or legal authority for her assertion the LOC is not the determinative tool. The uncontested, material evidence presented requires a finding that the Appellant does qualify for a nursing facility level of care under Door 1.

[REDACTED] provided insufficient information to show that the Appellant is not eligible for Medicaid nursing facility services and thus MIChoice program eligibility. The Appellant did show that she requires a nursing facility level of care, thus is eligible for the MIChoice program. The Appellant meets the requirements for Door 1 on the Medicaid Nursing Facility Level of Care Determination Tool, therefore, she is eligible for MIChoice program eligibility.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that [REDACTED] improperly determined the Appellant was not eligible for the MIChoice Waiver.

IT IS THEREFORE ORDERED that

The Department's decision is REVERSED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6/10/2009

***** NOTICE *****

The Administrative Tribunal 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 Administrative Tribunal 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.