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. 2009-32933 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 [redacted]. [redacted] appeared on behalf of the Appellant, [redacted]. The evidentiary record was left open until [redacted], to allow introduction of additional evidence however, none was received. The evidentiary record was thereafter closed.

[redacted] appeared on behalf of the [redacted]. [redacted], also appeared on behalf of the Department's MI Choice Waiver agency.

ISSUE

Did the Waiver Agency properly terminate services due to lack of eligibility for participation in 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. The Appellant is a [redacted] participant in the MI Choice Waiver program.

2. The Appellant's Waiver services were scheduled for an assessment on [redacted].

3. The Department's Waiver Services contracted agency, the [redacted] conducted an assessment on the scheduled date.

4. As a result of the assessment findings, it was determined the Appellant was no longer qualified to participate in Waiver services because he did not meet nursing home eligibility criteria in established Department of Community Health policy.

5. At assessment the agency determined the Appellant is independent in his bed mobility, transfers, toilet use and eating.

6. The Appellant does not have a memory problem, is independent in his daily decision making and can make himself understood.

7. The Appellant had no physician visit in the 14 days prior to the screening and zero physician order changes.

8. The Appellant does not suffer any of the conditions or participate in any of the following treatments: stage 3-4 pressure sores, intravenous or parenteral feedings, intravenous medications, end stage care, daily tracheostomy care, daily respiratory care, daily suctioning, pneumonia within the last 14 days, daily oxygen therapy, daily insulin with two order changes in the last 14 days or peritoneal or hemodialysis.

9. The Appellant does have stage 2 pressure sores, which is an improvement from his previous condition. At the assessment, the nurse telephoned his doctor's office to confirm the status of his pressure sores.

10. The Appellant did not participate in skilled therapies such as speech, occupation or physical therapy at the time of the assessment.

11. The Appellant had not exhibited any of the scored behavioral symptoms, specifically: wandering, verbal abuse, physical abuse, been socially inappropriate or resisted care within the 7 days preceding the screening date.

12. The Appellant had not participated in the program for at least one year prior to the screening date.

13. The Department determined the Appellant is not eligible for participation in the program.

14. The Department sent a Denial Notice on or about [redacted].

15. The Appellant appealed the determination on or about [redacted].

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 Appellant is claiming eligibility for 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 Health Care Financing Administration to the Michigan Department of Community Health (Department). Regional agencies, in this case the Waiver Agency, 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)).

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

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, 2005, Pages 1 – 9* or LOC). The LOC must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice 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 MI Choice Waiver services, the Appellant must meet the requirements of at least one Door. The Department presented testimony and documentary evidence that the Appellant 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

The evidence presented is uncontested that the Appellant is independent in bed mobility, transfers, toileting and eating. He did not score at least 6 points, thus he did not qualify through 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.”

No evidence was presented indicating the Appellant has severely impaired decision making or that he has a memory problem. He can make himself understood. The evidence presented is uncontested that the Appellant did not qualify under Door 2.

Door 3
Physician Involvement

The LOC indicates that to qualify under Door 3 the applicant must:

> …[M]eet either of the following to qualify under
>
> 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.

The Appellant stated he had a medication change following the assessment and he visits the doctor every 2 weeks. The agency's witness stated she was told at assessment his last doctor's visit was the date of the assessment and that he had not had a doctor's appointment for the 2 weeks prior to that. Despite the contested evidence presented regarding doctor's visits, even if the Appellant's testimony were taken as established and true, it does not evidence he meets the criteria. There was no evidence presented the Appellant had at least 2 physician visits and at least two physician order changes in the 14 days that preceded the assessment date, therefore, he did not meet the criteria listed for Door 3.

Door 4
Treatments and Conditions

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

The evidence of record establishes the Appellant had previously had stage 3-4 pressure sores, thus had qualified through this door. He had participated in the program and received treatment for those sores. The treatment had resulted in a marked improvement such that the pressure sores were now considered stage 2, per his doctor's office. This evidence is uncontested. Stage 2 pressure sores do not satisfy the qualifying criteria. The uncontested evidence demonstrates that Appellant did not qualify under Door 4.

Door 5
Skilled Rehabilitation Therapies

The level of care tool provides that the applicant must:

> …[H]ave 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 evidence of record demonstrates that Appellant did not qualify under Door 5 because at the time of assessment he was not participating in any skilled therapies. There was evidence presented he was scheduled to begin some physical therapy on [redacted]. This was following the assessment date of [redacted], thus does not satisfy the criteria.

Door 6
Behavior

In order to qualify under Door 6 the Appellant must meet one of the following two criteria:

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.

No evidence was presented demonstrating that Appellant met the criteria set forth above.

Door 7
Service Dependency

LOC page 7 provides that the applicant could qualify under Door 7 if he or she is currently being served in a nursing facility (and for at least one year) or by the MI Choice or PACE program, and requires ongoing services to maintain his or her current functional status. The evidence of record establishes the Appellant began his participation in the MI Choice waiver program [redacted]. The date of assessment was [redacted], thus he had been a program participant for less than one year. There was no evidence of program dependency introduced into the record. He does not qualify for program participation through the criteria in Door 7.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Waiver Agency properly denied the Appellant's MI Choice Waiver services

application.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 11/23/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 State Office of Administrative Hearings and Rules for the Department of Community Health 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.