STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2010-34249 EDW

Appellant
_______________________/

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 . appeared on his own behalf. , Social Worker Supports Coordinator, and . , RN Supports Coordinator, both from appeared on behalf of the Department of Community Health. is the MI Choice Waiver agent for the Michigan Department of Community Health, (hereinafter Department).

ISSUE

Did the Waiver Agency properly terminate participation in the MI Choice Waiver program following eligibility review?

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 participant in MI Choice Waiver Services.

2. The Appellant had been found eligible for participation in the MI Choice Wavier program upon his initial assessment in in the nursing home. (RN Testimony)

3. In , the Appellant moved out of the nursing home, but was found eligible for participation in the program through Door 5 of the eligibility criteria due to receiving physical therapy 2-3 times per week. (RN Testimony)

4. At the [redacted] re-assessment, the Appellant demonstrated independence with most of his transfers, bathing, and housekeeping. (RN Testimony and Exhibit 1, pages 28-29)

5. On [redacted], the waiver agency confirmed that the Appellant was no longer receiving physical therapy. (RN Testimony and Exhibit 1, pages 3 and 17)

6. On [redacted], the waiver agency completed the Michigan Medicaid Nursing Facility Level of Care Determination finding that the Appellant was no longer eligible for participation in the MI Choice Waiver services. He is not eligible for nursing facility placement, thus did not meet eligibility criteria. (Exhibit 1, pages 7-14)

7. On [redacted], the waiver agency issued an Advance Action Notice to the Appellant indicating his personal care waiver services would terminate effective [redacted] because he was not medically eligible. (Exhibit 2, page 15)

8. The Appellant requested a formal, administrative hearing on [redacted]. (Exhibit 2)

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 Centers for Medicare and Medicare Services 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 six (6) points, thus did not qualify through Door 1. The Appellant testified that he uses a wheelchair and prosthetic leg, but

has pain if he wears the prosthetic to long/often. The Appellant's testimony indicates he needs assistance with transportation and housekeeping. However, these are not activities of daily living considered 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."

No evidence was presented indicating the Appellant has severely impaired decision making or that he has a memory problem. The Appellant can make himself understood. The evidence presented is uncontested that the Appellant 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.

There was no evidence presented the Appellant had met any of the criteria listed for Door 3 at the time of the assessment, April 30, 2010. The assessment indicates he had one physician visit but no order changes within the past 14 days. (Exhibit 1, page 10) The evidence presented is uncontested that the Appellant 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

No evidence was presented indicating the Appellant had met any of the criteria listed for Door 4 at the time of the assessment, [redacted].

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.

The Appellant had initially scored through this door because he was receiving physical therapy services. However, the waiver agency contacted the physical therapy provider to verify that the Appellant had not received physical therapy within the two weeks prior to [redacted] and was discharged from the program. (RN Testimony and Exhibit 1 pages 3 and 17) Since the Appellant was no longer receiving physical therapy services at the time of the Assessment, he no longer qualified under Door 5. The Appellant testified that he believed he supposed to be reevaluated for physical therapy and would be readmitted. However, the Appellant acknowledged that he never got back in to physical therapy. The evidence presented establishes that the Appellant no longer qualifies 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.

No evidence was presented demonstrating that Appellant met the criteria set forth above to 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 assessment provides that the applicant could qualify under Door 7 if he 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.

The assessment indicates that the Appellant had not been in the program for a period of at least one (1) year at the time of assessment in [redacted], thus he does not satisfy this criteria. (Exhibit 1, page 13) However, the RN's testimony indicated that the Appellant's case was opened [redacted] when the Appellant was in a nursing home.

While the Appellant may have been a program participant for at least one year, he has not demonstrated that ongoing services are required to maintain functional status and that no other community, residential or informal services are available to meet his needs. The waiver agency confirmed the Appellant's functional status with the physical therapy provider and that there are informal supports assisting with transportation. The waiver agency also made referrals to other service programs. (Exhibit 1, page 3)

While this ALJ is sympathetic to the Appellant's position, she does not have authority to override or disregard the policy set forth by the Department. The Appellant does not meet the nursing facility level of care criteria to be eligible for ongoing waiver services.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

Date Mailed: 8/4/2010

***** 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.