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:

Docket No. 2010-55004 EDW

[redacted],

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 [redacted]. The Appellant represented himself at hearing.

[redacted], appeared on behalf of the Department of Community Health. [redacted] appeared and testified on behalf of [redacted] and the Department of Community Health.

ISSUE

Did the Waiver Agency properly deny 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 [redacted] applicant for MI Choice Waiver Services.
2. The Appellant had a telephone screen conducted by a care manager on [redacted].
3. The telephone screen utilized the Michigan Medicaid Nursing Facility Level of Care Determination criteria set forth in the Medicaid Provider Manual.
4. The Appellant answered the questions posed during the telephone screen.

5. The care manager determined, based upon the Appellant's answers to the LOC questions that he does not meet he qualifying criteria of the assessment's results for Doors 1-7.

6. The Appellant did not present any medical documentation his medical condition satisfies any of the criteria contained on the Michigan Medicaid Nursing Facility Level of Care Determination Guide.

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

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

9. 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 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 Appellant did not assert or present any evidence he is dependent in bed mobility, transfers, toileting or 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 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. He was asked the last time he visited the doctor and stated he did not know but it was 1 or 2 months ago. This is an insufficient basis upon which a finding could be made that he qualified by entering through 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 material and reliable evidence demonstrates that Appellant did not qualify under Door 4. The Appellant asserts he has scratches and a sore on his ankles. He did not assert he had a stage 3 or 4 pressure sore specifically, nor did he provide any documentation to support his claim of ankles sores. He further asserted he had been in the hospital where his sores had been treated. He did not provide a time frame for his hospitalization, nor documentation supporting his claim. This ALJ does not have the authority to disregard the criteria or the material evidence of record. There is an insufficient basis upon which it could be found he meets the criteria given the lack of substantial or reliable evidence to support the Appellant's claims of qualifying medical conditions.

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 demonstrates that Appellant did not qualify under Door 5.

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 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 Appellant had not been in the program for a period of at least one year at the time of assessment, thus he does not satisfy this criteria.

This ALJ gave the Appellant every opportunity to establish he meets the criteria as set forth in the MDCH criteria. There was no evidence presented that he does. 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.

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: 11/16/2010

***** 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.