

**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. 2010-28207 EDW

██████████,

Appellant

_____ /

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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared without representation. She had no witnesses. ██████████, hearings coordinator, represented the Department's waiver agency. His witnesses were ██████████, social worker and ██████████, R.N. Also in attendance was ██████████, supervisor.

ISSUE

Did the Department properly determine on reassessment that the Appellant was no longer eligible for the MIChoice 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. On ██████████, the Appellant was reassessed via home visit. Department's Exhibit A, pp. 1 - 16.
2. The Appellant was found to not qualify under any of ██████████ mandatory service domains. Department's Exhibit A, p. 18.
3. The Department contracts with the waiver agency to provide MI Choice waiver services to eligible beneficiaries.
4. The Appellant is a ██████████-old woman. The Appellant's diagnosis includes OCD, PTSD, mitral valve disorder, agoraphobia, joint disease unspecified, neuropathy, tachycardia NOS, dysphagia and occasional incontinence. (Exhibit A, pp. 1 - 16).

5. During the ██████████ reassessment, the waiver agency care team observed the Appellant ambulate independently and exhibiting intact decision-making skills. It was observed that the Appellant chooses to limit her social interaction and is alone for most of the day. (Exhibit A, pp. 3 and 6).
6. During the reassessment the waiver agency care team asked Appellant questions related to the nursing home seven-door, level of care determination tool. The Appellant answered the questions competently. She said that her doctor had not recommended that she enter a nursing home. (Exhibit A, p. 3)
7. Based on their observations the assessment team determined the Appellant did not meet any of the seven-door level of care determination tool criteria and therefore did not meet the level of nursing home skilled care. (Exhibit A, p. 16).
8. On ██████████, the waiver agency sent an Advance Action Notice to the Appellant notifying her of a termination of MIChoice waiver services because she was “no longer eligible for waiver services.” (Exhibit A, p. 16)
9. A voicemail message was left with ██████████ County Department of Human Services advising them that Appellant was terminated from the waiver program and that she desired to resume services through them. (Exhibit A, p. 35)
10. On ██████████, the State Office of Administrative Hearings and Rules received the instant request for hearing from the Appellant. (Exhibit #1).

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 was receiving 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 (CMS, 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).

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)).

Home and community based services means services not otherwise furnished under the State’s Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. (42 CFR 440.180(a)).

The state of Michigan utilizes the seven-door level of care determination tool to assess whether an individual needs a nursing home level of care. The evidence in this record demonstrates that the Appellant does not need a nursing home level of care.

During the hearing the MI Choice waiver agency witnesses testified that at the ██████████, reassessment they observed the Appellant ambulate independently and to demonstrate adequate decision-making skills.

During the reassessment the waiver agency reviewers asked Appellant questions related to the nursing home seven (7) door level of care determination tool. The waiver agency care management witnesses explained that Appellant had clear comprehension as she answered all of their questions. Because the Appellant demonstrated no cognitive deficits, she was not eligible for the waiver through door two (2). The Appellant was well aware of her medications and related scheduling.

The Appellant testified that the waiver agents didn’t know anything about her – that she did have trouble remembering when to take medications owing to her PTSD disorder. She said she can’t walk, suffers from dysphagia and has stomach and bowel issues. She said it is hard to function – and that she [didn’t] “do well when asked questions on demand.”

The waiver agency witnesses testified that their findings were normal and that the Appellant volunteered that she was “independent on toileting, transferring and eating. “ Their conclusion at hearing was the while the Appellant was distraught - she was in control and better suited to services with the CMH – which she has been pursuing regularly.

Based on their observations and on the information told them by the Appellant, the waiver agency care management team determined the Appellant did not meet any of the seven-door level of care determination tool criteria, nor did she meet a nursing home level of care, and therefore the Appellant's MI Choice waiver services were terminated.

The Appellant bears the burden of proof, by a preponderance of evidence, that the waiver agency did not properly terminate her services. A preponderance of the material and credible evidence established that the waiver agency acted in accordance to the law and the Department policy, and its actions were proper when it terminated the Appellant's MI Choice program eligibility.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department has properly determined the Appellant does not meet the Nursing Facility Level of Care and is, therefore, ineligible for MI Choice Waiver services at this time.

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6/25/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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.