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. 2011-12011 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 . , the Appellant, appeared on her own behalf.

, appeared on behalf of the Department's MI Choice program waiver agency (hereafter, 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 and has been a participant in MI Choice Waiver Services for many years. (Exhibit 1, pages 3 and 11, Exhibit 2, page 16)

2. The Appellant has multiple diagnoses including severe scoliosis and pulmonary compromise. (Exhibit 1, page 12)

3. The Appellant had been receiving MI Choice Waiver services in , Michigan through a different MI Choice Waiver agency, . (Appellant and Testimony)

4. On , a referral was made to transfer the Appellant's MI

Choice Waiver services case to the . (Exhibit 2, page 17)

5. On , the Appellant moved to MI. (Exhibit 2, page 16)

6. On , the made a home visit to complete an initial assessment with the Appellant. A Michigan Medicaid Nursing Facility Level of Care Determination (LOC) was also completed. (Exhibit 1, page 16)

7. The Appellant was found eligible through Door 7 of the LOC. (Exhibit 1, page 16)

8. Before in-home services were initiated, the waiver agency reviewed the determination that the Appellant qualified for the MI Choice Waiver program through Door 7 of the LOC. (Exhibit 1, page 15)

9. Upon review, the waiver agency found that the Appellant did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care, specifically because services would be available to the Appellant through other resources. (Testimony)

10. On the waiver agency issued notice to the Appellant that she did not qualify for the MI Choice Waiver services program. (Exhibit 3)

11. The Appellant requested a formal, administrative hearing on . (Exhibit 1, pages 1-9)

12. The Appellant was approved for Home Help Services through the Department of Human Services effective . (Appellant Testimony)

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 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. (Exhibit 2, pages 19-24) The waiver agency explained that they are unable to provide documentary evidence of the LOC determination they completed, but testified 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

(Exhibit 2, pages 19-21)

The Appellant testified that she is independent with bed mobility and toilet use. She stated that she has a lift chair and is independent with transferring. She also explained that she can eat herself if the food is there, for example eating a meal she can microwave. The only trouble with activities of daily living the Appellant discussed in her testimony were with activities of daily living not considered under Door 1, such as mobility and bathing. Accordingly, the Appellant did not score at least six (6) points to 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."

(Exhibit 2, pages 21-22)

The Appellant has testified that her short term memory is OK and she is independent with daily decision making. The Appellant stated that she thinks she has problems making herself understood. (Appellant Testimony) The Appellant was able to make herself understood during the hearing proceedings. However, the Appellant could not meet the criteria for Door 2 only based on problems making herself understood. A memory problem is needed in combination with problems making herself understood to the degree of only sometimes being understood or rarely/never being understood to qualify under Door 2. The evidence can not support a finding that the Appellant qualified 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.

(Exhibit 2, page 22)

The Appellant's testimony discussed several doctor appointments that were not within 14 days of the date the LOC was completed, . She did indicate there was an appointment on , when the Medical Needs form was completed, she has pulmonary rehabilitation three times per week, and missed an appointment on . However, the Appellant did not recall any physician's order changes within the 14 day period. Accordingly, the Appellant could not meet either of the criteria listed for Door 3 at the time of the re-assessment.

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

(Exhibit 2, page 23)

The Appellant's testimony did not indicate that she met any of the criteria listed for Door 4 within 14 days of . For example the daily shots administered for protein deficiency are subcutaneous not intravenous and her respiratory care is only three days per week. (Appellant Testimony) Accordingly, the Appellant did not qualify under Door 4.

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. (Exhibit 2, page 23)

No evidence was presented indicating the Appellant received any skilled rehabilitation therapies within 7 days of [redacted]. Accordingly, the Appellant did not qualify 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.

(Exhibit 2, pages 23-24)

No evidence was presented indicating the Appellant had any delusions, hallucinations, or any of the specified behaviors. She only testified that she may have lost her temper. Accordingly, the Appellant did not 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 she 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.
>
> (Exhibit 2, page 24)

It is uncontested that the Appellant has been a participant for over one year and has recently been approved for services under the Department of Human Services Home Help Program. The Appellant has serious concerns about her Home Help Services provider collecting the full payment for the authorized services when they are not actually providing services to her for most of the authorized hours. However, these valid concerns, the possibility of recoupment, or any request to change Home Help Services providers must be addressed with the provider agency and the Department of Human Services.

The Appellant further asserted that she is not able to receive all the services she was receiving through the MI Choice Waiver Program through the Home Help Program. For example, the Home Help Program does not include home delivered meals or medical transportation. However, the [redacted] testified that these services are still available to the Appellant through resources outside the MI Choice Waiver program. For example, home delivered meals can be provided through Meals on Wheels and medical transportation is covered for Medicaid beneficiaries through the beneficiaries Medicaid Health Plan or through DHS for straight/fee for service Medicaid beneficiaries. Accordingly, the Appellant can not meet the criteria to remain eligible through Door 7 because services are available to her through a combination of other resources to meet her needs.

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.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 3/10/2011

***** 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.