

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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. 2011-22137 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 ██████████. ██████████, Appellant's grand-daughter, represented the Appellant. The Appellant was present and her representative translated for her. ██████████

██████████ (MI Choice waiver program), represented the Department's Waiver Agency.

ISSUE

Did the Waiver Agency properly determine the Appellant was not eligible for 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 was enrolled in the MI Choice waiver.
2. The Appellant is a ██████ year-old woman with depression, anxiety, and a history of a hemangioma. Hemangioma is a benign vascular anomaly, it is not brain cancer. Appellant does not have the cancer form of leukemia. The Appellant does not have dementia. (Exhibit 3)
3. The Appellant has family that lives with or near her, including a daughter and grand-daughter who assists her. (Exhibit 3 and testimony).
4. The Appellant lives with her daughter, her son-in-law, and her husband. (Testimony of Appellant's grand-daughter).
5. The Appellant is enrolled in and has been receiving MI Choice waiver

services. (Exhibit 3).

6. The Waiver Agency is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
7. Effective November 1, 2004, all MI Choice waiver applicants are required to be assessed using the MDCH approved Level of Care Assessment Tool. (Exhibit 2).
8. On ██████████ ██████████ sent a Memorandum to all MI Choice Waiver program directors advising that individuals who can be served by the Department of Human Services (DHS) Home Help Services (HHS) program must receive services from that program first and cannot receive services from both HHS and MI Choice. (Exhibit 4).
9. On ██████████, Waiver Agency intake staff completed an in-person MDCH Level of Care Determination with Appellant and Appellant's daughter, who lives with Appellant and interpreted for Appellant during the assessment. (Exhibits 2, 3).
10. Waiver Agency staff determined that the Appellant was ineligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that she did not need a Nursing Facility Level of Care and she could receive services from DHS HHS if needed. (Exhibit 1).
11. On ██████████, the Waiver Agency sent Appellant a notice that it determined she was not eligible for the MI Choice waiver. (Exhibit 1).
12. On ██████████, MDCH received the Appellant's request for an administrative hearing. (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.

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. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

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The Medicaid Provider Manual, Nursing Facilities Coverages Section, July 1, 2009, lists the policy for admission and continued eligibility as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MI Choice, and PACE services.

Section 4.1 of the Medicaid Provider Manual Nursing Facility Coverages Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination Tool. The LOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. A written form of the LOC, as well as field guidelines are found in the *MDCH Nursing Facility Eligibility Level of Care Determination, Pages 1-9, 3/07/05* and *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines, Pages 1-19, 3/15/05*.

The Waiver Agency provided evidence that on [REDACTED], Waiver Agency intake staff completed an in-home Michigan Medicaid Nursing Facility Level of Care Determination to determine if the Appellant met criteria for the MI Choice waiver program. Waiver Agency staff determined that the Appellant was ineligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that she did not need a Nursing Facility Level of Care and she could receive services from DHS HHS if needed. (Exhibit 1).

The Level of Care Assessment Tool consists of seven service entry Doors. (Exhibit 2). 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 Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door. The Waiver Agency presented evidence that based on the Appellant's daughter's and Appellant's answers during the in-person assessment, and their observations, she did not meet any of the criteria for Doors 1 through 7.

Door 1
Activities of Daily Living (ADLs)

LOC page 3 of 9 provides that the applicant must score at least six points to qualify under Door 1.

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

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."

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.

Door 4
Treatments and Conditions

LOC page 5 indicates that 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

Door 5
Skilled Rehabilitation Therapies

LOC page 6 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

Door 6
Behavior

An applicant must exhibit any of the following behavior symptoms during the 7 days before the assessment: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, Resists Care. An applicant must exhibit any of the following Problem Conditions during the 7 days before the assessment: Delusions and Hallucinations. LOC page 8 provides that to qualify under Door if the applicant must score under the following two options:

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.

Door 7
Service Dependency

An applicant could qualify under Door 7 if there was evidence that she or he is currently being served in a nursing facility (and for at least one year) or by the MI Choice or PACE program, and required ongoing services to maintain her current functional status. The Waiver program witness explained that on [REDACTED] [REDACTED], sent a Memorandum to all MI Choice Waiver program directors advising that individuals who can be served by the Department of Human Services (DHS) Home Help Services (HHS) program must receive services from that program first and cannot receive services from both HHS and MI Choice. (Exhibit 4). The Waiver program witness testified that if Appellant needed services she could receive them through the DHS HHS.

The Appellant's grand-daughter/representative testified that the Appellant is a woman with dementia, but the preponderance of credible evidence demonstrated that Appellant has depression, not dementia. The Appellant's representative stated that the Appellant needs assistance because she has arthritis but the preponderance of credible evidence demonstrated that Appellant's doctors do not state she has arthritis. The Appellant's grand-daughter testified that the Appellant has a brain cancer, but the preponderance of credible evidence demonstrated that Appellant has a benign (non-cancer) malformation of blood vessels, and not brain cancer. The Appellant's grand-daughter/representative testified that the Appellant has leukemia, but when questioned further admitted the leukemia was not the imminently fatal blood cancer. The testimony of Appellant's grand-daughter/representative lacks credibility and therefore is assessed less evidentiary weight. On at least four occasions the Appellant's grand-daughter overstated or misrepresented Appellant's medical conditions. The Appellant's grand-daughter misrepresented Appellant's medical conditions despite the fact that she introduced a note from Appellant's psychiatrist and doctor that stated what Appellant's diagnoses were. The Appellant's grand-daughter/representative requested an opportunity to submit additional evidence, her request was granted, the evidence was received and reviewed but did not improve Appellant's credibility. It is important for the Appellant and the Appellant's grand-daughter/representative to understand that Medicaid cannot pay for a program for which Appellant is not eligible. It is fraud to misrepresent in order to receive benefits for which she is not eligible.

Weighing the evidence in this case the Waiver Agency provided a preponderance of evidence to show that the Appellant is not eligible for Medicaid nursing facility services and thus not eligible for the MI Choice program. The Appellant did not prove by a preponderance of evidence that she requires a Nursing Facility Level of Care and MI Choice program eligibility. The Appellant does not meet the requirements for any Door 1 through 7 on the Medicaid Nursing Facility Level of Care Determination Tool. Therefore, she is not eligible for MI Choice program eligibility.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined the Appellant was not eligible for the MI Choice waiver.

IT IS THEREFORE ORDERED that:

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

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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cc:



Date Mailed: 5/31/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.