STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2011-23576 EDW

[redacted],

Appellant.
_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a telephone hearing was held [redacted]. [redacted], daughter in law, appeared on the Appellant's behalf.

[redacted], appeared on behalf of [redacted] is the MI Choice Waiver agent for the Michigan Department of Community Health, (waiver agency). [redacted], appeared as a witness for the waiver agency.

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 [redacted] years old and has been a participant in MI Choice Waiver Services since the end of [redacted]. (Exhibit 3, page 1 and [redacted] Testimony)

2. The Appellant has multiple diagnoses including transient ischemic attack, hypertension, arthritis, osteoperosis, stroke/cerebral vascular accident, and shingles. (Exhibit 3, pages 15-6)

3. On [redacted], the waiver agency made a home visit to complete a re-assessment with the Appellant. A Michigan Medicaid Nursing Facility

Level of Care Determination (LOC) was also completed. (Exhibits 2 and 3)

4. The Appellant did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit 2, pages 8-9)

5. On [redacted], the waiver agency issued notice to the Appellant that her MI Choice waiver services would terminate effective [redacted] because re-assessment determined service (s) were no longer necessary due to participant not meeting criteria. (Exhibit 1)

6. The Appellant requested a formal, administrative hearing on [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 MORC, 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)

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 1-3)

The Appellant's daughter in law testified that she assists the Appellant with bed mobility, transfers, and toileting. However, this was not what the Appellant reported during the home visit. (Exhibit 2 pages 1-3 and Exhibit 3, pages11-12) The Appellant's daughter in law explained that the Appellant has huge problems with English and hides her inabilities.

The letter submitted by the Appellant's family indicates the Appellant has a history of falling from the bed if left unsupervised or unattended for hours, falling when she forgets to use her walker, and requires physical assistance as well as supervision with toilet use. (Exhibit A pages 1-3) However, incidents referenced in the letter occurred some time ago. The LOC determination tool specifies the review period for each Door. For Door 1, the look pack period is only the 7 days prior to the date the LOC was completed. In this case relevant review period is the 7 days prior to [redacted]. (Exhibit 2, pages 1-3)

The Appellant's daughter in law's testimony and the family letter also indicate the Appellant needs assistance with meal preparation. However, this is a separate activity than eating. The Appellant's daughter in law acknowledged that the Appellant can eat independently most of the time.

The waiver agency completed the re-assessment and LOC determination with the Appellant using a translator. The waiver agency relied upon the Appellant's answers to the re-assessment and LOC questions. It does not appear there was any reason for the waiver agency to doubt the accuracy of the Appellant's answers, which were consistent with what was reported at prior re-assessments. The waiver agency explained that they had previously been finding the Appellant eligible through Door 1 due to her use of a walker. However, the waiver agency has since received clarification on scoring for Door 1 and understands that use of a walker alone is not the type of weight-bearing support that allows for a sufficient score to be found eligible through Door 1. (Exhibits 2 pages 1-2, Exhibit 3, pages 1 and 11-12, [redacted] Testimony)

The Appellant did not score at least six (6) points to qualify through Door 1 based on the information she provided during the [redacted], home visit.

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 3-4)

It is uncontested that the Appellant has a memory problem. The Appellant's daughter in law's testimony indicated that the Appellant can make herself understood in Russian most of the time. The Appellant's daughter in law contests the waiver agency's determination that the Appellant is independent with cognitive skills for daily decision making. The family letter states that the Appellant is in constant need of supervision and needs daily reminders for medication, meal-taking, dressing, and using her walker if she moves around. (Exhibit A) However, the Appellant's daughter in law's testimony only indicated that she calls the Appellant to make sure she has not gone outside because she forgets her walker. The Appellant's daughter in law's testimony also referenced an incident when the Appellant went to visit a friend without talking to anyone, forgot to take her walker and ended up sitting on the stairway when she became confused. However, later testimony indicated this incident occurred in [redacted]. The time period at issue for Door 2 is also limited to the 7 days prior to [redacted].

During the home visit, the Appellant reported her independence with cognitive skills for daily decision making. It does not appear there was any reason for the waiver agency to doubt the accuracy of the Appellant's answers, which were consistent with what was reported at prior re-assessments. (Exhibit 2, pages 3-4, Exhibit 3, pages 3-4) The Appellant did not meet the criteria to qualify through Door 2 based on the information she provided during the [redacted], home visit.

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 4)

There was no evidence presented contesting the waiver agency's determination that the Appellant did not have sufficient physician's visits or order changes during the relevant time period to meet the criteria for 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

(Exhibit 2, page 5)

No evidence presented indicating that the Appellant received any of the specified treatments or demonstrated any of the specified health conditions during the relevant time period to meet the criteria for 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, pages 5-6)

No evidence was presented indicating the Appellant received any skilled rehabilitation therapies within the relevant time period. 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 6-7)

The Appellant's daughter in law indicated a concern with wandering. She testified that she calls to make sure the Appellant has not gone outside because of the episode where the Appellant went to visit a friend in [redacted]. The relevant time period for Door 6 is also the 7 days prior to [redacted]. The evidence does not support a finding that the Appellant exhibited wandering behavior in the applicable time frame. 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 7)

It is uncontested that the Appellant has been a participant for over one year. The Appellant was receiving about an hour and a half of services four days per week through the MI Choice waiver program. The services included assistance with personal care (3 showers per week, some grooming and ½ hour for medication reminders) and homemaking (meal preparation, laundry, cleaning). The waiver agency indicated that the Appellant's needs for assistance could be met through the Department of Human Services Home Help Program. ([redacted] Testimony). While reminders for medications may not be covered under the Home Help program, the Appellant reported that she takes all her medications as ordered can take her own blood pressure during the re-assessment. ([redacted] Testimony). Accordingly, the Appellant can not meet the criteria to remain eligible through Door 7 because services are available to meet her needs through other resources, including the Home Help Program and continued informal support from family members.

This does not imply a finding that the Appellant no longer needs any assistance. Only that the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care criteria at the time of the re-assessment based on the information provided to the waiver agency. Accordingly, the Appellant was not eligible for continuing services through the MI Choice Waiver program. If she has not already done so, the Appellant may wish to apply for Home Help Services with the Department of Human 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 because she did not meet the Michigan Medicaid Nursing Facility Level of Care criteria.

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

[redacted]
Docket No. 2011-23576 EDW
Decision and Order

cc: [redacted]

Date Mailed: 6/7/2011

***** 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.