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. 2011-23581 EDW

[redacted],

Appellant

_____/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held [redacted]. The Appellant was represented by her son, [redacted]. She was present at the hearing. [redacted], appeared on behalf of the Department of Community Health. The [redacted] is the MI Choice Waiver agent for the Michigan Department of Community Health, (Department).

ISSUE

Did the waiver agency properly terminate participation in the MI Choice Waiver program following an eligibility review?

FINDINGS OF FACT

The Administrative Law Judge, based on 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 [redacted].

2. The Appellant resides in the geographic area served by the [redacted].

3. The Appellant has severe arthritis in both of her legs. She is functionally ambulatory inside of her apartment but relies on a motorized wheelchair for mobility outside of her residence.

4. The Appellant has received MI Choice waiver services since [redacted].

5. On [redacted], the Appellant had a 90 day re-assessment to

determine if she was still medically qualified to participate in waiver services. At assessment it was determined she was no longer eligible to participate in the waiver program because she did not satisfy medical criteria.

6. The Appellant was informed she did not meet the medical criteria to continue participation in the waiver service at the conclusion of her [redacted] assessment, however her services continued

7. The Appellant was assigned a new care manager who reviewed the [redacted] assessment and determined the case should have been closed. A new notice of termination was mailed to Ms. Pryor on or about [redacted].

8. The Appellant requested a formal, administrative hearing [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 Macomb Oakland Regional Center, Inc., 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 <u>when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR</u> 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 [redacted] assessment notes indicate that the Appellant reported that she is independent with bed mobility, eating, toileting, and transferring.

The Appellant testified that she is independent with bed mobility, eating, and toileting. However, she stated that she does not always make it to the bathroom in time any longer and must use sanitary napkins now.

While this ALJ can see by review of the documentation in evidence and testimony of the Appellant that her medical condition has changed with respect to continence, the fact of bladder incontinence does not render the Appellant eligible to pass through Door 1 of the criteria. She must score at least 6 points to be eligible through this door.

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."

The waiver agency found that the Appellant's memory was okay, she was independent with cognitive skills for daily decision making, and she was able to make herself understood. No evidence was presented to refute this finding; accordingly, the Appellant did not qualify 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.

At the time of assessment there was no evidence the Appellant had satisfied the criteria for entry through this door. At hearing, the Appellant's representative did not contest this determination.

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

At the time of assessment there was no evidence the Appellant had satisfied the criteria for entry through this door. At hearing, the Appellant's representative did not contest this determination.

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.

The waiver agency found that the Appellant did not qualify through Door 5 because she did not have any skilled rehabilitation therapies within the relevant 7-day review period. At hearing, the Appellant's representative did not contest this determination.

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.

At the time of assessment there was no evidence the Appellant had satisfied the criteria for entry through this door. At hearing, the Appellant's representative did not contest this determination.

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 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.

It is uncontested that the Appellant has been a participant since [redacted]. However, the waiver agency found that the services the Appellant is receiving could be provided by other community-based programs, i.e., the Home Help program through the Department of Human Services. Because other services are available to meet the Appellant's needs, she did not qualify through Door 7.

While this Administrative Law Judge is sympathetic to the Appellant's position, I do not have authority to override or disregard the policy set forth by the Department. The Appellant did not meet the nursing facility level of care criteria at the time of the [redacted], assessment to be eligible for waiver services. This is not a determination that the Appellant does not need assistance, only that she is not eligible to receive ongoing services through the MI Choice Waiver program. If she has not already done so, the Appellant should follow up with the Department of Human Services for the Home Help program.

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 MI Choice Waiver services.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

[redacted]
Docket No. 2011-23581 EDW
Decision and Order

cc: [redacted]

Date Mailed: 5/27/2011

***** 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.