

**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. 2011-27366 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 ██████████. ██████████ represented the Appellant. She had no witnesses. ██████████, represented the Department's waiver agency. Her witness was ██████████, Social Worker.

ISSUE

Did the Department properly determine that the Appellant did not qualify for the MI Choice Waiver program based on the Michigan Medicaid Nursing Facility Level of Care assessment?

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 a ██████-year-old Medicaid beneficiary. Appellant's Exhibit #1.
2. On ██████████, the waiver agency completed an in-home assessment of the Appellant. Department's Exhibit A, p. 2.
3. Based on the information provided at the in-home assessment the Appellant did not meet any service domain to secure eligibility for enrollment in the MI Choice waiver program. Department's Exhibit A, pp. 4-8.
4. The Assessment Report verified the Appellant's history with the waiver agency including her receipt of light housekeeping, meals and medication

management. Department's Exhibit A, pp. 10-24.

5. The Appellant was observed to have some mental difficulty with new situations but deemed otherwise cognitively [modified] intact and stable. See Testimony and Department's Exhibit A, p. 5.
6. The Appellant was determined on assessment conducted by a registered nurse to not be in need of services to prevent her from having to enter a LTC nursing facility. With "reminders" it was determined that she could manage her own medications. Department's Exhibit A, p. 22.
7. The Appellant was advised of the Department's decision by adequate action notice on ██████████. Department's Exhibit A, p. 3.
8. An MPRO review was conducted on or about ██████████ which determined that the Appellant no longer qualified for nursing facility level of care. Department's Exhibit A, p. 2.
9. Again, the Appellant was notified of the proposed termination of benefits by advance action notice with her further appeal rights contained therein. Department's Exhibit A, p. 9.
10. The Appellant requested an administrative hearing before the Michigan Administrative Hearing System for the Department of Community Health on ██████████. Appellant's 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 is seeking 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 Waiver Agency (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)

Home and community based services are allowed, under 1915(c) (42 USC 1396n(c)), 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))

The Michigan Department of Community Health (MDCH) implemented functional/medical eligibility criteria for Medicaid nursing facilities, 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 5.1.D., of the Medicaid Provider Manual (MPM) references the use of the online Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) tool. The LOCD must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE, where available. MPM, §5.1.D., NF Coverages, April 1, 2011, pp. 8-13.

The LOCD 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 waiver agency determined that the Appellant was independent in all fields of mobility.

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."

While the evidence presented that the Appellant did not qualify under Door 2 the Agency witness confirmed that the Appellant does experience some difficulty in decision making when confronted with new situations. The Appellant can make herself understood with clarity.

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.

The evidence presented is uncontested that the Appellant was not qualified under Door 3 as she did not have any physician exam visits or physician order changes within 14 days of the 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

No evidence was presented indicating the Appellant had met the criteria listed for Door 4 at the time of the assessment.

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.

No evidence was presented indicating the Appellant had met the criteria listed for Door 5 at the time of the assessment.

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.

No evidence was presented indicating that Appellant met the criteria set forth above to 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.

It was uncontested that the Appellant had been receiving service for over one year. However, her need was determined to be financial, not physical, and that other resources exist in the community for the Appellant's assistance. See Department's Exhibit A, page 7.

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The Appellant's representative testified that she believes that her sister (the Appellant) hears voices – although she will not acknowledge so. She added that the Appellant does not speak in complex sentences and listens to the radio at a loud volume. She said that on the street where she lives - she does not know where she is and would be unable to take a cab to the hairdresser.

While this ALJ is sympathetic to the Appellant's position, he does not have authority to override or disregard the policy set forth by the Department in the MPM. The LOCD represents a snapshot of the Appellant's condition at a single point in time – on the date of assessment [REDACTED] she failed to satisfy MPM policy for continued eligibility. On further review by MPRO it was determined that she no longer needed nursing facility level of care.

The Department's review, utilizing the LOCD tool, was correct when administered.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Waiver Agency properly determined that the Appellant did not qualify for MI Choice Waiver services on in-home assessment conducted on [REDACTED].

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 7/22/2011

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***** 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.