

**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. 2011-29675 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 ██████████. The Appellant appeared without representation. Her witness was ██████████. ██████████ represented the Department's waiver agency. Her witnesses were ██████████

ISSUE

Did the Department properly deny the Appellant's request for additional hours of waiver services through 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. On ██████████, the Appellant was assessed during an in-person home visit. Department's Exhibit A, p. 1.
2. The Appellant was found to qualify under door seven (7) as she continued to be dependent on Waiver services at the time of in home assessment. Department's Exhibit A, pp. 1, 9-28.
3. On ██████████, the Appellant requested additional hours from the Agency owing to an upcoming short term hospitalization ██████████ through ██████████. Department's Exhibit A, p. 1.
4. The Appellant's request was reviewed and denied for lack of change in health, functioning or informal support. Department's Exhibit A, p. 1.

5. The Appellant was unable to verbalize what additional care she required beyond her currently endorsed 6 to 8 hours per day, 7 days per week.
6. The Appellant was given an Adequate Action Notice on ██████████, setting forth her further appeal rights on denial of her request for additional hours of Waiver services. Department's Exhibit A, p. 8.
7. The instant request for hearing was received by 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 claiming 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 Region VII Area Agency on Aging, 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))

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 MIChoice 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 meet the criteria at door 7 – service dependency.

There was no dispute between the parties as to this assessment.

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

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

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.

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

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.

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.

Door 7 Service Dependency

Scoring Door 7: The applicant must be a current participant and demonstrate service dependency under Door 7.

The assessment provided that the Appellant did qualify under Door 7 owing to service dependency. It was uncontested that the Appellant was a program participant for over one year.

The Department's witnesses testified that the Appellant was unable to explain what additional help she needed in order to recuperate from her hospitalization. At hearing the Appellant said that she was going to be hospitalized again on ██████████, and that there were things she could no longer do. She asserted that she had undergone a change of condition since ██████████.

Her witness testified that she observed the Appellant experience difficulty getting off the couch, getting dressed or administering personal care. She added that the Appellant is unable to drive and complains of double vision.

The Appellant added that she has a "tumor on the top of her head and Parkinson's disease" and that she used to be able to "pitch in" and help with the services.

The Agency witness, ██████████, testified that the Appellant had been reassessed in ██████████ and that it was determined those [existing] service hours were adequate to meet her needs. Agency representative ██████████ testified that the Appellant has been scheduled for additional assessment[s] to be conducted in-home as a follow up precaution.

The Appellant did manifest anxiety-like symptoms common to those who suffer from Parkinson's disease. Whether she has reached a tipping point with her disease process cannot be determined on this record – however the facts preponderate that the Agency has taken an active role in serial reassessment to make certain the Appellant receives the care she needs – when she needs it.

Presumably her spinal surgery and the tumor diagnosis will bring a plan of care to which either the Appellant or the Agency can respond as needed.

On review, the Appellant failed to preponderate her burden of proof. The ALJ is bound by the policy requiring MI Choice Waiver program participants to meet the Medicaid

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nursing facility level of care criteria. Based on the information at the time of the assessment, and thereafter, the Appellant did meet the Medicaid nursing facility level of care criteria and received an appropriate amount of personal care service consistent with her existing need. Accordingly, the Waiver agency properly denied the additional service hours.

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's request for additional MI Choice Waiver services.

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:



Date Mailed: 7/13/2011

***** 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.