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. 2011-48475 EDW Case No. 24598747
Appellant/	
DECISION AND ORDER	
This matter is before the undersigned Administr M.C.L. § 400.9 and 42 C.F.R. § 431.200 et seq hearing.	. , , , ,
After due notice, a hearing was held on daughter, appeared and testified on Appellant in-law, also testified on her behalf. Department of Community Health's Waiver Acenter, Inc. ("Waiver Agency" or ""). Worker, and "", Registered Nurs witnesses for the Waiver Agency.	, Program Manager, represented the
<u>ISSUE</u>	

Did the Waiver Agency properly determine that Appellant was not eligible for the MI Choice Waiver Program?

FINDINGS OF FACT

IN THE MAATTED OF

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- 1. Appellant is a year-old woman and has been diagnosed with hypertension, peripheral vascular disease, arthritis, dementia, diabetes mellitus, a history of polio, and arrhythmia. (Exhibit 1, pages 15, 22).
- 2. Appellant is enrolled in and has been receiving MI Choice waiver services from ...
- 3. Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.

- 4. Effective November 1, 2004, all MI Choice waiver applicants are required to be assessed using the MDCH approved Level of Care Assessment Tool. Medical Services Administration Policy Bulletin 11-27 (July 1, 2011) (hereinafter "MSA 11-27").
- 5. On staff completed a reassessment and MDCH Level of Care Determination with Appellant and determined that Appellant was not eligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that she did not qualify for such services. (Exhibit 1, pages 7-30; Testimony of February).
- 6. On seem of the sent Appellant a notice that it had determined she was no longer eligible for the MI Choice waiver program. The effective date of the termination from the program was identified as . (Exhibit 1, page 3).
- 7. On administrative hearing. (Exhibit 3, page 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. 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.

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 (NFLOC) Determination Tool. The NFLOC 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 NFLOC, 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 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 Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door.

In this case, Appellant was previously found to be eligible for MI Choice services through Door 1. However, at the reassessment completed on staff completed a Michigan Medicaid NFLOC determination and found that Appellant was no longer be eligible for MI Choice services through that Door or any other Door. In response, Appellant's representative argues that Appellant was and is eligible through Door 1, Door 2, and Door 7. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's termination of services should be affirmed.

Door 1 Activities of Daily Living (ADLs)

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

Scoring Door 1: The applicant must score at least six points to qualify under Door 1.

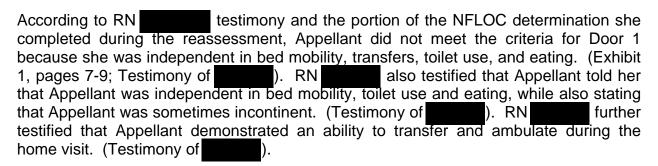
(A) Bed Mobility, (B) Transfers, and (C) Toilet Use:

- 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 1, page 9)



Despite Appellant's representative's detailed testimony regarding Appellant's capabilities, she also conceded that she was not present during the home visit and does staff. (Testimony of not know what Appellant told Moreover. Appellant's representative's testimony regarding Appellant's need for assistance in certain areas is unsupported by the evidence she submitted. For example, while the letters from Appellant's doctors she submitted describe Appellant's extensive medical issues (Exhibit 2, pages 8-10, 12-15), those medical issues are undisputed and the issue is the effect those conditions have on Appellant's functioning. Here, the doctors' letters opine that Appellant needs assistance with various tasks, but none of those tasks include the four activities of daily living relevant to Door 1. (Exhibit 2, pages 8-9, 12-15). The sole exception is the medical needs form submitted along with Appellant's application for Home Help Services, which does appear to provide that Appellant has a medical need for assistance with eating, toileting, transferring, and mobility. (Exhibit 2, page 10). However, that form does not contain any support for its conclusions and it contradicts all of the doctors' letters. (Exhibit 2, page 10).

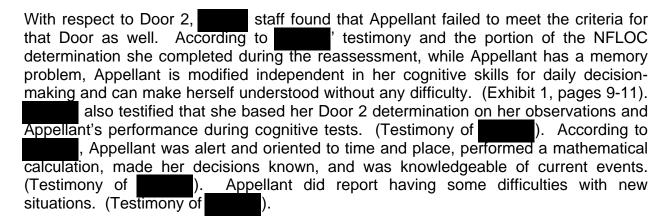
Given the lack of support for her arguments in the medical evidence Appellant submitted and the fact that Appellant's representative was not present during the home visit, as well as the credible testimony of RN , this Administrative Law Judge finds that Appellant has failed to meet her burden of proving by a preponderance of the evidence that she met the criteria for Door 1 and the Waiver Agency's decision with respect to that Door should be affirmed.

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 1, page 10)



In response, Appellant's representative testified that Appellant needs assistance in making basic decisions and that Appellant is being treated for both dementia and depression. (Testimony of the control of the contr

Again, this Administrative Law Judge would note that Appellant's representative was not present during the home visit and cannot testify as to how Appellant acted during that visit or performed on any cognitive test. Moreover, while a diagnosis of dementia was noted by staff (Exhibit 1, page 22), they also wrote that Appellant was not receiving any treatment for dementia at the time of the reassessment (Exhibit 1, page 22) and none of Appellant's medical evidence provides that she is receiving any such treatment (Exhibit 2, pages 8-19). Similarly, the medical evidence submitted by Appellant's representative fails to demonstrate that Appellant is suffering from any significant memory loss or cognitive impairment. (Exhibit 2, pages 8-19). Likewise, the letter to the judge Appellant's representative submitted along with her exhibit states that Appellant only has difficulty making herself understood because of language issues, and not because of any cognitive difficulties. (Exhibit 2, pages 2-7).

Given the above evidence, the Waiver Agency's finding that Appellant failed to satisfy the criteria of Door 2 must be affirmed.

<u>Door 7</u> <u>Service Dependency</u>

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.

(Exhibit 1, page 13)

With respect to Door 7, Appellant's representative argues that her mother has been in the MI Choice Waiver Program for years and still requires its services to maintain her current functional status. However, the Waiver Agency properly notes that, as

discussed above, Appellant does not meet the criteria of any other doors and that her needs can be met through Home Help Services. Appellant has applied for Home Help Services. Given that application, as well as the level of Appellant's functioning status discussed above, this Administrative Law Judge finds that Appellant has failed to meet her burden of proof with respect to Door 7 as well.

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:

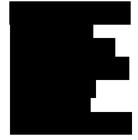
The Department's decision is AFFIRMED.

Steven J. Kibit

Administrative Law Judge
for Olga Dazzo, Director

Michigan Department of Community Health

CC:



Date Mailed: <u>10/31/2011</u>

*** 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.