

**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. 2011-2472 EDW

████████████████████
Appellant
_____ /

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. ██████████, ██████████ and ██████████, appeared on the Appellant's behalf. ██████████ appeared and testified.

████████████████████, appeared on behalf of ██████████, the Department's MI Choice program waiver agency (hereafter, Department). ██████████ and ██████████ appeared as witnesses for the Department.

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 ██████████ and has been a participant in MI Choice Waiver Services since ██████████. (Exhibit 1, page 2 and RN Testimony)
2. The Appellant has multiple diagnoses including rheumatoid arthritis, hypertension, and chronic hepatitis C. (Exhibit 1, pages 10-11)
3. When the Appellant initially qualified for MI Choice Waiver services in ██████████, he lived in ██████████ and was served by a different MI Choice Waiver agency. (Exhibit 1, pages 2-3 and RN Testimony)

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4. On ██████████, the ██████████ completed a re-assessment with the Appellant. (Exhibit 1, pages 2-20)
5. On ██████████, the waiver agency also completed a Michigan Medicaid Nursing Facility Level of Care Determination. (Exhibit 1, pages 21-28)
6. The Appellant did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit 1, page 28)
7. On ██████████, the waiver agency issued an Adequate Action Notice to the Appellant indicating his MI Choice Waiver services would terminate effective ██████████, based on the Level of Care Determination. (Exhibit 1, page 34)
8. The Appellant requested a formal, administrative hearing on ██████████
██████████ (Exhibit 1, page 36)

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 ██████████, 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

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“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. 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 Appellant reported that he was independent with bed mobility, transfers, toileting and eating at the time of the [REDACTED], re-assessment. (Exhibit 1, pages 16-17 and 21-23) The Appellant did not dispute his independence with these activities. Rather, he was upset that the waiver agency indicated he would do anything to keep these services. The Appellant stated that he is honest with the waiver agency about what he can do, including when he is able to get up and around inside his home by himself. (Appellant Testimony) The only trouble with an activity of daily living the Appellant discussed in his testimony was

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recent falls in the bathtub. However, bathing is not an activity of daily living considered under Door 1. Accordingly, the Appellant did not score at least six (6) points to qualify through Door 1.

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."

Based on the information available at the time of the [REDACTED], re-assessment, the waiver agency determined that the Appellant's short term memory was okay, he was independent with cognitive skills for daily decision making, and was able to make himself understood. (Exhibit 1, pages 7-8 and 23-24) The Appellant asserts that he has a memory problem, such as leaving things running. The Appellant also disputed that he is able to make himself understood, explaining that he has to repeat himself because he gets too excited. (Appellant Testimony)

Door 2 considers short term memory, specifically the ability to recall after 5 minutes. (Exhibit 1, page 23) The re-assessment notes do not indicate that a short term memory problem was reported or observed during the re-assessment visit. (Exhibit 1, pages 7-8) The Appellant was also able to express himself without difficulty and make himself understood during the re-assessment visit. This was consistent with the Appellant being able to clearly express himself and make himself understood during the hearing proceedings.

The waiver agency had to base their determination on the information provided at the re-assessment. It was not reported nor observed that the Appellant had any short term memory problems or any trouble making himself understood. Further, no evidence was presented that the Appellant is only sometimes or rarely understood as described in the Michigan Medicaid Nursing Facility Level of Care Determination. (Exhibit 1, page 24) 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

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- 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.

No evidence was presented indicating the Appellant had any physician's visit exams or order changes within the 14 day period that would have allowed him to meet either of the criteria listed for Door 3 at the time of the re-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 any of the criteria listed for Door 4 at the time of the re-assessment. Accordingly, the Appellant did not qualify under 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.

No evidence was presented indicating the Appellant required any skilled rehabilitation therapies within 7 days of the [REDACTED], reassessment. 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.

No evidence was presented indicating the Appellant had any delusions, hallucinations, or any of the specified behaviors within 7 days of the ██████████, reassessment. 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 he 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.

It is uncontested that the Appellant has only been a participant since ██████████. Accordingly, he could not meet the criteria to remain eligible through Door 7 at the time of the ██████████, reassessment because he had not been a program participant for at least one year.

The Appellant submitted additional documentation, including notes from two of his doctors and a ██████████, services approval notice from the Department of Human Services (DHS) regarding the Home Help Services program. (Exhibit 3) The doctor’s notes indicate a need for services, but do not discuss any of the criteria considered under the Michigan Medical Nursing Facility Level of Care Determination. Additionally, the DHS approval notice for the Home Help Services program is not related to the Appellant’s MI Choice Waiver services case. This is a separate program administered through DHS and does not involve the waiver agency. If he is not currently receiving Home Help Services through DHS, the Appellant can always reapply for this program at his local DHS office.

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Based on the information at the time of the [REDACTED], re-assessment, the Appellant did not meet the Medicaid nursing facility level of care criteria. This does not imply that the Appellant does not need any assistance, only that he is not eligible to receive ongoing services through the MI Choice Waiver. Accordingly, the Waiver Agency properly terminated the Appellant's MI Choice Waiver 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.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 1/6/2011

***** 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.