

**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. 2011-25335 EDW

██████████,

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 on ██████████. The Appellant, ██████████, was present. Her daughter and caregiver, ██████████, represented her. ██████████, Program Manager, appeared on behalf of Macomb-Oakland Regional Center, Inc. (MORC). MORC is the MI Choice Waiver agent for the Michigan Department of Community Health, (waiver agency). ██████████, Registered Nurse, appeared as the waiver agency's witness.

ISSUE

Did the waiver agency properly terminate MI Choice Waiver program services?

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 ██████ years old and has been a participant in MI Choice Waiver services since ██████. (Testimony of ██████)
2. The Appellant has multiple diagnoses, including hypertension, arthritis, diabetes, and asthma. (Exhibit 1, page 12)
3. The Appellant was receiving 16 hours per week of personal care and homemaking services. (Exhibit 1, page 2)
4. On ██████████, the waiver agency conducted an assessment with the Appellant. (Exhibit 1, pages 10-16)
5. On ██████████, the waiver agency also completed a Michigan Medicaid

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Nursing Facility Level of Care Determination. (Exhibit 1, pages 4-7)

6. The Appellant did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit 1, page 2)
7. On [REDACTED], the waiver agency issued an Advance Action Notice to the Appellant, indicating that her MI Choice Waiver services were being terminated because she does not meet nursing home eligibility requirements. (Exhibit 1, page 2)
8. After receiving the Advance Action Notice, the Appellant requested an exception through MPRO, which was granted based on the Appellant's fragility. (See Exhibit 1, page 8)
9. The Appellant requested a formal, administrative hearing on [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, MORC, 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

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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 as follows:

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

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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.

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. The Appellant's representative did not dispute

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this information. Accordingly, the Appellant did not receive skilled rehabilitation therapies within the 7-day period that would have allowed her to qualify through 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 Waiver Agency presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7. The waiver agency conceded that MPRO granted a fragility exception to the Appellant. However, the waiver agency found that the services the Appellant is receiving could be provided by other community-based programs, such as the Home Help Services (HHS) program through the Department of Human Services. The waiver agency referred this Administrative Law Judge to the MI Choice Operations Advisory Letter # 26, dated [REDACTED], which states that the MI Choice Contract waiver agencies must consider if the beneficiary's needs can be met by the HHS program before authorizing waiver services. (Exhibit 1, page 18) Because other services are available to meet the Appellant's needs, the waiver program stated that it cannot provide waiver services.

The Appellant's representative testified that she does not understand why the Appellant qualified for so many years and now she does not qualify. She further stated that she does not believe HHS can provide the Appellant with the hours that she needs. However, she could not articulate any particular need that could not be met by the HHS program.

While this Administrative Law Judge is sympathetic to the Appellant's circumstances, I do not have authority to override or disregard the policy set forth by the Department. Because it appears that the Appellant's service needs can be met through the HHS program, waiver service could not be authorized.

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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**.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 5/31/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.