

**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. 2011-27492 EDW

████████████████████,

Appellant.

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

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

████████████████████, appeared on behalf of ██████████ is the MI Choice Waiver agent for the Michigan Department of Community Health (waiver agency). ██████████ appeared as a witness for the waiver agency.

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 ██████ years old and has been a participant in MI Choice Waiver services since ██████. (Exhibit 3, page 1 and Program Manger Testimony)
2. The Appellant has multiple diagnoses including depression, congestive heart failure, coronary heart disease, hypertension, peripheral vascular disease, arthritis, osteoperosis, and spinal stenosis. (Exhibit 3, pages 5-6)
3. On ██████████, the waiver agency made a home visit to complete a re-assessment with the Appellant. A Michigan Medicaid Nursing Facility Level

- of Care Determination (LOC) was also completed. (Exhibits 2 and 3)
4. The Appellant did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit 2, pages 8-9)
 5. On [REDACTED], the waiver agency issued notice to the Appellant that his MI Choice Waiver services would terminate effective [REDACTED]. (Exhibit 1; Exhibit 2, pages 8-9)
 6. 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 the 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 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 (7) 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. (Exhibit 2)

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

(Exhibit 2, pages 1-3)

The Appellant's daughter testified that the Appellant felt great at the last home visit because he had recently received his back pain shot. She stated that the relief from the shots lasts for 5-10 days. However, the Appellant's daughter explained that after that right after the shot the Appellant is in a lot of pain and changes positions often with help. She explained that the Appellant is not independent with transferring and she takes the Appellant from bed to the bathroom and to the kitchen twice per day. The Appellant's daughter reminds the Appellant to eat and puts the food on the table for him. She explained that the Appellant lays down after he gets his back pain shot for about a half day, can move some the next day, and is better after 1-2 days. (Daughter Testimony)

For Door 1, the look back period is only the 7 days prior to the date the LOC was completed. (Exhibit 2, pages 1-3) The waiver agency completed the re-assessment and LOC determination with the Appellant using a translator. (Exhibit 3, page 1) The Appellant

did not report any needs for assistance with bed mobility, transfers, toilet use, or eating during the relevant time period. The Appellant did not score at least six (6) points to qualify through Door 1 based on the information he provided during the ██████████, home visit.

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 2, pages 3-4)

It is uncontested that the Appellant has a memory problem. The Appellant's daughter did not contest the waiver agency findings that the Appellant is modified independent with cognitive skills for daily decision-making and is able to make himself understood. Accordingly, the Appellant did not meet the criteria to qualify through 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 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.

(Exhibit 2, page 4)

There was no evidence presented contesting the waiver agency's determination that the Appellant did not have sufficient physician's visits or order changes during the relevant time period to meet the criteria for Door 3.

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

(Exhibit 2, page 5)

No evidence presented indicating that the Appellant received any of the specified treatments or demonstrated any of the specified health conditions during the relevant time period to meet the criteria for 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. (Exhibit 2, pages 5-6)

The Appellant's daughter testified that the Appellant received physical therapy for a month, from ██████████ into ██████████. However, she was unsure of the date of the last physical therapy appointment. Accordingly, there was insufficient evidence presented to show that the Appellant received skilled rehabilitation therapy within the 7 days prior to ██████████. 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.

(Exhibit 2, pages 6-7)

The Appellant's daughter testified that the Appellant can not manage stress and can be verbally abusive due to pain. However, she indicated he was not verbally abusive in the week prior to the ██████████, home visit. 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 she 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.

(Exhibit 2, page 7)

It is uncontested that the Appellant has been a participant for over one year. The Appellant was receiving personal care and homemaking services as well as meals through the MI Choice Waiver program. (Exhibit 3, page 11) The Program Manager explained that homemaking and personal care services could be provided through the Department of Human Services Home Help Program. (Program Manger Testimony). Home Delivered Meals can also be arranged outside of the MI Choice Waiver program. Accordingly, the Appellant can not meet the criteria to remain eligible through Door 7 because services are available to meet his needs through other resources, including the Home Help Program, continued informal support from family members, and continued home delivered meals outside the MI Choice Waiver program.

This does not imply a finding that the Appellant no longer needs any assistance. Only that the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care criteria at the time of the re-assessment. Accordingly, the Appellant was not eligible for continuing services through the MI Choice Waiver program. The Appellant's daughter testified that she contacted the Department of Human Services and left a message with her father's information. If he has not already done so, the Appellant may wish to follow up with the Department of Human Services and complete an application for the Home Help Services program. The waiver agency may also be able to provide information on arranging continued home delivered meals.

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 because he did not meet the Michigan Medicaid Nursing Facility Level of Care criteria.

IT IS THEREFORE ORDERED that:

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

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 6/29/2011

***** 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.