

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2011-29698 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. ██████████, the Appellant, appeared and testified.

██████████, Program Manager, appeared on behalf of ██████████. ██████████ is the MI Choice Waiver agent for the Michigan Department of Community Health (waiver agency). ██████████, and ██████████ 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. (Exhibit 1, page 13)
2. The Appellant has multiple diagnoses including blindness, hypertension, gastric diverticulum, systemic lupus erythematosus, and chronic obstructive asthma. (Exhibit 1, pages 18-19)
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. (Exhibit 1, pages 3-27)

4. The Appellant did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit 1, pages 10-11)
5. On ██████████, the waiver agency issued notice to the Appellant that her MI Choice Waiver services would terminate effective ██████████. (Exhibit 1, page 2)
6. The Appellant requested a formal, administrative hearing on ██████████.

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 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 1, pages 3-5)

The Appellant did not contest the waiver agency's determination that she is independent for bed mobility, transfers, toilet use, and eating. She noted that if she was having a bad day, she could turn in bed and that she has a walker as well as two canes to use to get up to go to the bathroom. (Appellant Testimony) The evidence supports the waiver agency's determination that the Appellant was independent with bed mobility, transfers, toilet use, and eating. (Exhibit 1, pages 3-5) 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."

(Exhibit 1, pages 5-6)

The Appellant testified that her memory is ok most of the time, she is independent with cognitive skills for daily decision making, and she is able to make herself 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 1, pages 6-7)

The Appellant testified that it was probably correctly marked that she had one physician visit and no order changes in the two weeks prior to ██████████. The testimony indicated that the Appellant has had more doctor appointments and changes to a few medications, but they were likely more recent. (Appellant and Daughter Testimony) Without more specific evidence of physician's visits and order changes within the relevant two week period, the waiver agency's determination that the Appellant did not have sufficient physician's visits or order changes to meet the criteria for Door 3 must be upheld.

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 1, page 7)

No evidence was 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 1, pages 7-8)

No evidence presented indicating that the Appellant received skilled rehabilitation therapies during the relevant time period to meet the criteria for 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 1, pages 8-9)

No evidence presented indicating that the Appellant displayed any of the behavioral symptoms or problem conditions considered to 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: 15 minutes, 1 day per week for grooming nails; 11.75 hours per week for homemaking (laundry, cooking meals, cleaning, errands); personal emergency response system; and 5 home delivered meals per week through the MI Choice Waiver program. (Exhibit 1, page 1) The Program Manager and RN Supports Coordinator explained that homemaking and personal care services could be provided through the Department of Human Services Home Help Program. The Appellant does not have a spend down for her Medicaid eligibility, therefore, she would qualify for the Home Help Program financially. Continued home delivered meals can also be arranged outside of the MI Choice Waiver program. (Program Manager and RN Supports Coordinator Testimony) Accordingly, the Appellant can not meet the criteria to remain eligible through Door 7 because services are available to meet her needs through other resources.

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. If she has not already done so, the Appellant may wish to complete an application for the Home Help Services program with the Department of Human Services. The waiver agency may also be able to assist with arranging for 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 she 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

[REDACTED]
Docket No. 2011-29698 EDW
Decision and Order

cc:

[REDACTED]

Date Mailed: 7/14/2011

***** 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.