

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

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-40741 EDW
Case No. ██████████

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 ██████████, son, appeared on the Appellant's behalf. ██████████, Supports Coordinator appeared on behalf of ██████████ is the MI Choice Waiver agent for the Michigan Department of Community Health (waiver agency).

ISSUE

Did the waiver agency properly propose terminating the Appellant's 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 for over one year. (Uncontested)
2. The Appellant has multiple diagnoses including depression, hypertension, arthritis, anxiety, cholesteatoma, dementia, history of coronary artery disease, congestive heart failure, peripheral vascular disease, benign prostatic hyperplasia, shortness of breath, dizziness, claudication, abdominal pain, back pain and advanced degenerative changes involving L5-S1. (Exhibit D, pages 8-9; Exhibits 1-2 and 4)
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 C and D)

4. The waiver agency determined that the Appellant did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit C, page 8)
5. On ██████████, the waiver agency issued notice to the Appellant that his MI Choice Waiver services would terminate effective ██████████. (Exhibit B)
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 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 "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 C) The re-assessment report shows that the Supports Coordinator, a translator, a nurse and the Appellant's son were also present for the assessment with the Appellant. (Exhibit D, page 2) The Supports Coordinator testified that the Appellant was able to answer all questions through the translator and his son

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 C, pages 1-3)

The waiver agency found that the Appellant was independent with bed mobility, transfers, toilet use and eating. (Exhibit C, pages 1-3) The Appellant's son contested the Appellant being found independent for transfers and eating. He testified that the Appellant needs help getting up very occasionally, maybe once during the seven days prior to ██████████. He further explained that the Appellant does not eat unless he is reminded or even forced to eat. He indicated that the Appellant seldom attends meals downstairs, does not use a microwave, and his doctor recently took blood to check nutrient levels. (Son Testimony) The Appellant's need for supervision with eating was supported by one of the submitted doctor statements. (Exhibit 1)

Regarding transfers, an individual is considered independent with this activity even if "help

or oversight provided only 1 or 2 times during the last 7 days.” (Exhibit C, page 1) Accordingly, the Appellant was properly scored as independent for transfers. The evidence supports a finding that the Appellant requires supervision for eating. However, this would not change the Appellant’s score for Door 1 because only one point is scored for independence or supervision with eating. (Exhibit C, page 3) Based on the evidence, the Appellant scored one point each for being independent with bed mobility, transfers and toilet use, and one point for needing supervision for eating. The Appellant did not score at least six (6) points, thus he did not 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.”

The waiver agency found that the Appellant has a short term memory problem, is modified independent with cognitive skills for daily decision making, and is able to make himself understood. (Exhibit C, pages 3-4)

It is uncontested that the Appellant has a short term memory problem. The Appellant’s son contests the waiver agency determination that the Appellant is modified independent with cognitive skills for daily decision making. He testified that the Appellant does not make decisions of any kind, sits on the couch all day and does nothing. The Appellant has a pill box that dispenses medications and has an alarm, but the Appellant may still not take his medications. (Son Testimony) This is supported by a letter from the Appellant’s doctor stating that the Appellant has dementia moderate in degree, “with poor judgment and easy distractibility. This makes it mandatory that he have someone closely monitor his medication as well as monitor his nutritional status. Without this monitoring, this patient is at risk for increasing disability and failing health. Patient is unable to do this by himself.” (Exhibit 1) As noted by the Appellant’s son, the waiver agency was aware of these issues and had a copy of the ██████████, doctor’s letter from a prior hearing, held ██████████

The doctor’s letter and the testimony of the Appellant’s son regarding a need for monitoring, multiple daily reminders and supervision with basic daily activities such as eating and taking medication indicates a moderate impairment with cognitive skills for daily decision making, rather than modified independence. In combination with the uncontested short term memory problem, the Appellant qualified under Door 2.


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Decision and Order

Since the Appellant met the criteria for Door 2 of the Michigan Medicaid Nursing Facility Level of Care Determination evaluation tool, the Appellant was eligible for continuing services through the MI Choice Waiver program. The waiver agency's proposed termination can not be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Waiver Agency improperly proposed terminating the Appellant's MI Choice Waiver services because he did meet the Michigan Medicaid Nursing Facility Level of Care criteria. The Appellant met the criteria for Door 2.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Appellant remains eligible for the MI Choice Waiver program.

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

cc:



Date Mailed: 9/26/2011

***** 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.