

**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:

██████████,

Appellant

Docket No. 2011-46098 EDW
Case No. 4066856

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant ██████████ appeared and testified on her own behalf. ██████████, Waiver Services Manager, represented the Department of Community Health's Waiver Agency, the Region █ Area Agency on Aging ("Waiver Agency" or "AAA"). ██████████, a registered nurse (RN), and ██████████, a licensed social worker (LSW), also testified as witnesses for AAA.

ISSUE

Did the Waiver Agency properly determine that Appellant was not eligible for the MI Choice waiver program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a █ year-old woman with fibromyalgia, obstructive sleep apnea, subjective memory difficulty, multiple pulmonary issues, Hepatitis C, and chronic pain. (Exhibit 1, pages 6-7, 16, 18).
2. Appellant is enrolled in and has been receiving MI Choice waiver services. (Exhibit 1, pages 28-30).
3. AAA is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
4. Effective November 1, 2004, all MI Choice waiver applicants are required

to be assessed using the MDCH approved Level of Care Assessment Tool. Medical Services Administration Policy Bulletin 04-15 (October 1, 2004) (hereinafter “MSA 05-21”).

5. On ██████████, AAA staff completed an in-person MDCH Level of Care Determination with Appellant and determined that Appellant was ineligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that she did not need a Nursing Facility Level of Care. (Exhibit 1, pages 37-38).
6. On ██████████, AAA sent Appellant a notice that it had determined she was no longer eligible for the MI Choice waiver program. (Exhibit 1, page 37).
7. On ██████████, the Department received Appellant’s request for an administrative hearing. (Exhibit 2, page 1).

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. 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.

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. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

The Medicaid Provider Manual, Nursing Facilities Coverages Section, July 1, 2009, lists the policy for admission and continued eligibility as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MI Choice, and PACE services.

Section 4.1 of the Medicaid Provider Manual Nursing Facility Coverages Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination Tool. The LOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. A written form of the LOC, as well as field guidelines are found in the *MDCH Nursing Facility Eligibility Level of Care Determination, Pages 1-9, 3/07/05* and *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines, Pages 1-19, 3/15/05*.

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 Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door.

Here, AAA provided evidence that on ██████████, AAA staff completed an in-home Michigan Medicaid Nursing Facility Level of Care Determination to determine if Appellant still met criteria for the MI Choice waiver program. AAA staff subsequently determined that Appellant was ineligible for the MI Choice waiver program because Appellant did not meet any of the criteria for Doors 1 through 7.

Door 1
Activities of Daily Living (ADLs)

LOC page 3 of 9 provides that the applicant must score at least six points to qualify under Door 1.

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 Impaired" or "Severely Impaired."
3. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

Door 3
Physician Involvement

The LOC indicates that to qualify under Door 3 the applicant must

...[M]eet either of the following to qualify under

1. At least one Physician Visit exam AND at least four Physician Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physician Order changes in the last 14 days.

Door 4
Treatments and Conditions

LOC page 5 indicates that 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

LOC page 6 provides that the applicant must:

...[H]ave 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

Door 6
Behavior

An applicant must exhibit any of the following behavior symptoms during the 7 days before the assessment: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, Resists Care. An applicant must exhibit any of the following Problem Conditions during the 7 days before the assessment: Delusions and Hallucinations. LOC page 8 provides that to qualify under Door if the applicant must score under the following two options:

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

An applicant could qualify under Door 7 if there was evidence that she or he is currently being served in a nursing facility (and for at least one year) or by the MI Choice or PACE program, and required ongoing services to maintain her current functional status.

In this case, Appellant was previously eligible for MI Choice services through Door 4 due to daily oxygen therapy (Testimony of ██████████) and that door appears to be the only possible door that Appellant can potentially meet the criteria for and the only door at issue here.

With respect to Door 4, RN Warner and LSW ██████████ completed the assessment at Appellant's home and they both testified that Appellant was not on oxygen during the home visit. (Testimony of RN ██████████; Testimony of LSW ██████████). ██████████ also testified that Appellant told her that Appellant wears an oxygen mask at night and sometimes during the day, if Appellant is active. (Testimony of RN ██████████).

Appellant, on the other hand, testified that she is strictly bound by her oxygen machine and uses it 24 hours a day. (Testimony of Appellant). Appellant also testified that the home visit took place during a small window of time when she was experiencing normal health and that there was a misunderstanding regarding her need to use the oxygen machine because she took off her mask to talk with the AAA staff and removed the wiring to clear room for her visitors. (Testimony of Appellant). Appellant further noted that she is under the care of doctors for acute bronchitis. (Testimony of Appellant).

Weighing the above evidence in this case, this Administrative Law Judge finds that the preponderance of evidence demonstrates that Appellant does not meet the

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requirements for any door on the Medicaid Nursing Facility Level of Care Determination Tool and, therefore, she is not eligible for MI Choice program eligibility. While Appellant claims that she requires daily oxygen therapy, she was not using an oxygen machine at the time of the assessment and there is no medical evidence in the record suggesting that she requires daily oxygen therapy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined Appellant was not eligible for the MI Choice waiver.

IT IS THEREFORE ORDERED that:

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

Steven Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 9/23/2011

***** 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.