

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. 2011-48472 EDW
Case No. 5216985

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's son, ██████████, appeared and testified on Appellant's behalf. Appellant was also present during the hearing and a translator, ██████████, assisted both Appellant and his son. ██████████, Regional Manager, represented the Department of Community Health's Waiver Agency, the Area Agency on Aging ██████████ ("Waiver Agency" or "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 an ██████ year-old man and has been diagnosed with diabetes mellitus, chronic obstructive pulmonary disease, hypertension, and arthritis. Appellant also suffered a stroke in the past. (Exhibit C, pages 1, 10).
2. Appellant is enrolled in and has been receiving MI Choice waiver services. (Exhibit E, pages 1-5; Testimony of Appellant's Representative).
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 for Appellant. (Exhibit C, pages 1-18; Exhibit D, page 1). Subsequently, AAA determined that Appellant is ineligible for the MI Choice waiver program because the Level of Care Assessment Tool indicates that he does not need a Nursing Facility Level of Care. (Exhibit E, pages 1-3).
6. On ██████████, AAA sent Appellant a notice that it had determined he was no longer eligible for the MI Choice waiver program. (Exhibit E, page 2).
7. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit F, 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 1 (Testimony of ██████████) and that door appears to be the only possible door that Appellant can possibly meet the criteria for. Doors 2 through 6 were discussed during the assessment, but the information provided by Appellant and Appellant's representative clearly demonstrates that Appellant is not eligible through those doors. (Exhibit C, pages 7-18; Exhibit D, page 1; Testimony of ██████████). Nor did Appellant's representative raise any arguments during the hearing that even suggested that Appellant would meet the criteria for Doors 2 through 6. (Testimony of ██████████ h).

Regarding Door 1, the Waiver Agency also properly determined that Appellant failed to meet the criteria for eligibility. The four areas that make up Door 1 were each specifically addressed during the assessment and Appellant was found to be independent with respect to Bed Mobility (Exhibit C, page 14; Exhibit D, page 1), Transfers (Exhibit C, page 14; Exhibit D, page 1), Toilet Use (Exhibit C, pages 13-14; Exhibit D, page 1), and Eating (Exhibit C, page 14; Exhibit D, page 1).

Similarly, while Appellant's representative described a number of things he does for his father and a number of areas where his father requires assistance, he did not testify that Appellant required assistance with eating or toileting. Appellant's representative also failed to testify that Appellant needed help with bed mobility or transferring. Appellant's

representative does rely on a medical needs form he submitted along with the Request for Hearing to support his argument that his father requires assistance. (Exhibit G, page 1). However, that form is applicable to Home Help Services, rather than the MI Choice, and AAA does not dispute that Appellant has needs that could be met through Home Help Services. Moreover, of the four tasks relevant to Door 1, only transferring is identified on the medical needs form as an area where Appellant requires assistance. (Exhibit G, page 1). Therefore, to the extent the medical needs form is even relevant, it supports the Waiver Agency's determination.

Weighing the above evidence, the Waiver Agency demonstrated by a preponderance of evidence that Appellant is not eligible for the MI Choice program while Appellant did not prove by a preponderance of evidence that he requires Nursing Facility Level of Care. Appellant does not meet the requirements for any Door on the Medicaid Nursing Facility Level of Care Determination Tool. Therefore, he is not eligible for MI Choice program eligibility.

DECISION AND ORDER

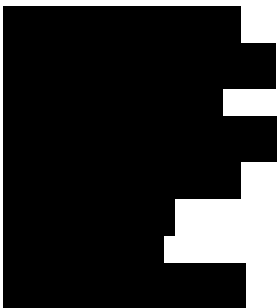
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined Appellant was not eligible for the MI Choice waiver.

IT IS THEREFORE ORDERED that:

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

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

cc:



Date Mailed: 9/23/2011

Docket No. 2011-48472 EDW
Decision and Order

***** 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.