

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-48475 EDW
Case No. 24598747

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 daughter, appeared and testified on Appellant's behalf. ██████████, Appellant's son-in-law, also testified on her behalf. ██████████, Program Manager, represented the Department of Community Health's Waiver Agency, the ██████████ Regional Center, Inc. ("Waiver Agency" or "██████████"). ██████████, Support Coordinator/Social Worker, and ██████████, Registered Nurse/Support Coordinator, also testified as witnesses for the Waiver Agency.

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 and has been diagnosed with hypertension, peripheral vascular disease, arthritis, dementia, diabetes mellitus, a history of polio, and arrhythmia. (Exhibit 1, pages 15, 22).
2. Appellant is enrolled in and has been receiving MI Choice waiver services from ██████████.
3. ██████████ 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.

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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 11-27 (July 1, 2011) (hereinafter "MSA 11-27").
5. On ██████████, ██████████ staff completed a reassessment and MDCH Level of Care Determination with Appellant and determined that Appellant was not eligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that she did not qualify for such services. (Exhibit 1, pages 7-30; Testimony of ██████████; Testimony of ██████████).
6. On ██████████, ██████████ sent Appellant a notice that it had determined she was no longer eligible for the MI Choice waiver program. The effective date of the termination from the program was identified as ██████████. (Exhibit 1, page 3).
7. On ██████████, the Department received Appellant's request for an administrative hearing. (Exhibit 3, 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 (NFLOC) Determination Tool. The NFLOC 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 NFLOC, 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.

In this case, Appellant was previously found to be eligible for MI Choice services through Door 1. However, at the reassessment completed on ██████████, ██████████ staff completed a Michigan Medicaid NFLOC determination and found that Appellant was no longer be eligible for MI Choice services through that Door or any other Door. In response, Appellant's representative argues that Appellant was and is eligible through Door 1, Door 2, and Door 7. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's termination of services should be affirmed.

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

(Exhibit 1, page 9)

According to RN ██████████ testimony and the portion of the NFLOC determination she completed during the reassessment, Appellant did not meet the criteria for Door 1 because she was independent in bed mobility, transfers, toilet use, and eating. (Exhibit 1, pages 7-9; Testimony of ██████████). RN ██████████ also testified that Appellant told her that Appellant was independent in bed mobility, toilet use and eating, while also stating that Appellant was sometimes incontinent. (Testimony of ██████████). RN ██████████ further testified that Appellant demonstrated an ability to transfer and ambulate during the home visit. (Testimony of ██████████).

Appellant's daughter/representative, on the other hand, testified that Appellant is unable to move around in her bed or to transfer out of that bed without assistance. (Testimony of ██████████). Appellant's representative also testified that Appellant needs assistance in getting up and down from chairs, couches and the toilet because of her deformed right leg. (Testimony of ██████████). When on the toilet, Appellant also needs help using it and cleaning herself. (Testimony of ██████████). Finally, Appellant's representative testified that Appellant cannot eat by herself because of her deformed right hand. (Testimony of ██████████).

Despite Appellant's representative's detailed testimony regarding Appellant's capabilities, she also conceded that she was not present during the home visit and does not know what Appellant told ██████████ staff. (Testimony of ██████████). Moreover, Appellant's representative's testimony regarding Appellant's need for assistance in certain areas is unsupported by the evidence she submitted. For example, while the letters from Appellant's doctors she submitted describe Appellant's extensive medical issues (Exhibit 2, pages 8-10, 12-15), those medical issues are undisputed and the issue is the effect those conditions have on Appellant's functioning. Here, the doctors' letters opine that Appellant needs assistance with various tasks, but none of those tasks include the four activities of daily living relevant to Door 1. (Exhibit 2, pages 8-9, 12-15). The sole exception is the medical needs form submitted along with Appellant's application for Home Help Services, which does appear to provide that Appellant has a medical need for assistance with eating, toileting, transferring, and mobility. (Exhibit 2, page 10). However, that form does not contain any support for its conclusions and it contradicts all of the doctors' letters. (Exhibit 2, page 10).

Given the lack of support for her arguments in the medical evidence Appellant submitted and the fact that Appellant's representative was not present during the home visit, as well as the credible testimony of RN ██████████, this Administrative Law Judge finds that Appellant has failed to meet her burden of proving by a preponderance of the evidence that she met the criteria for Door 1 and the Waiver Agency's decision with respect to that Door should be affirmed.

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, page 10)

With respect to Door 2, ██████████ staff found that Appellant failed to meet the criteria for that Door as well. According to ██████████' testimony and the portion of the NFLOC determination she completed during the reassessment, while Appellant has a memory problem, Appellant is modified independent in her cognitive skills for daily decision-making and can make herself understood without any difficulty. (Exhibit 1, pages 9-11). ██████████ also testified that she based her Door 2 determination on her observations and Appellant's performance during cognitive tests. (Testimony of ██████████). According to ██████████, Appellant was alert and oriented to time and place, performed a mathematical calculation, made her decisions known, and was knowledgeable of current events. (Testimony of ██████████). Appellant did report having some difficulties with new situations. (Testimony of ██████████).

In response, Appellant's representative testified that Appellant needs assistance in making basic decisions and that Appellant is being treated for both dementia and depression. (Testimony of ██████████).

Again, this Administrative Law Judge would note that Appellant's representative was not present during the home visit and cannot testify as to how Appellant acted during that visit or performed on any cognitive test. Moreover, while a diagnosis of dementia was noted by ██████████ staff (Exhibit 1, page 22), they also wrote that Appellant was not receiving any treatment for dementia at the time of the reassessment (Exhibit 1, page 22) and none of Appellant's medical evidence provides that she is receiving any such treatment (Exhibit 2, pages 8-19). Similarly, the medical evidence submitted by Appellant's representative fails to demonstrate that Appellant is suffering from any significant memory loss or cognitive impairment. (Exhibit 2, pages 8-19). Likewise, the letter to the judge Appellant's representative submitted along with her exhibit states that Appellant only has difficulty making herself understood because of language issues, and not because of any cognitive difficulties. (Exhibit 2, pages 2-7).

Given the above evidence, the Waiver Agency's finding that Appellant failed to satisfy the criteria of Door 2 must be affirmed.

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.

(Exhibit 1, page 13)

With respect to Door 7, Appellant's representative argues that her mother has been in the MI Choice Waiver Program for years and still requires its services to maintain her current functional status. However, the Waiver Agency properly notes that, as

discussed above, Appellant does not meet the criteria of any other doors and that her needs can be met through Home Help Services. Appellant has applied for Home Help Services. Given that application, as well as the level of Appellant's functioning status discussed above, this Administrative Law Judge finds that Appellant has failed to meet her burden of proof with respect to Door 7 as well.

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 the 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: 10/31/2011

***** 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.