

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. 2011-49360 EDW
Case No. 85489682

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, was present and represented himself. ██████████, Medicaid Waiver Program Supervisor, appeared on behalf of ██████████, the Department's MI Choice Program waiver agency. ██████████, R.N., appeared as a witness for the waiver agency.

ISSUE

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

FINDINGS OF FACT

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

1. The Appellant is ██████ years old and had been a participant in MI Choice Waiver Services from ██████ or ██████ until ██████. (Testimony)
2. The Appellant has multiple diagnoses, including pageants disease, osteitis deformans, hypertension, anemia, and hyperlipidemia. (Testimony)
3. When the Appellant initially qualified for MI Choice Waiver services, he did so through the waiver agency's nursing facility transition program. He also qualified under Door 5 because he was participating in physical therapy. (Testimony)
4. In ██████, the waiver agency completed a reassessment with the Appellant. At that time, he qualified under Door 1 because he required assistance with transferring. (Testimony)

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5. On [REDACTED], the waiver agency again reassessed the Appellant, and he qualified for services under Door 5 because he was participating in physical therapy. (Testimony)
6. On [REDACTED], the waiver agency again reassessed the Appellant and determined that the Appellant was no longer eligible for waiver services because he did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Testimony)
7. Appellant appealed the decision of the waiver agency and a hearing was held in [REDACTED]. At the hearing, the administrative law judge upheld the waiver agency's determination and Appellant was terminated from the program. (Exhibit 1)
8. Upon request by Appellant, he was reassessed for potential Waiver eligibility by the waiver agency on [REDACTED]. The RN completing the NFLOC concluded that Appellant still did not meet the eligibility criteria for Waiver services. (Exhibit 1, pp 5-13). Appellant was provided a Request for Hearing form following the completion of the assessment.
9. The Appellant's request for a formal, administrative hearing was received by the Tribunal on [REDACTED]. (Exhibit 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 (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 Senior Alliance, 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

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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-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. The Department presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7.

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

The Appellant reported that he was independent with bed mobility, but that he needed

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assistance with toilet use and eating. However, the waiver agency witness testified that Appellant was actually independent with toileting because he could change his own briefs. With regard to eating, Appellant admitted that he could make himself a sandwich and feed himself, but that he really could not cook, so he felt he needed assistance in that area because he was not getting good, balanced meals. However, given the fact that Appellant is able to feed himself, he is independent in this area. As such, the Appellant does not qualify under 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."

No evidence was presented indicating the Appellant has any issue with memory or making decisions that would have allowed him to meet the criteria listed for 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.

The Appellant had no physician's visit within the 14-day period leading up to the LOC Determination. As such, the Appellant did not qualify under Door 3.

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

No evidence was presented indicating that the Appellant had met any of the criteria listed for Door 4 at the time of the LOC Determination. Accordingly, the Appellant did not qualify under 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.

While Appellant has received physical therapy in the past, he is not currently receiving such therapy. Accordingly, the Appellant did not qualify under 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.

No evidence was presented indicating that the Appellant had any delusions, hallucinations, or any of the specified behaviors within seven days of the LOC Determination. Accordingly, the Appellant did not 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 LOC Determination provides that the Appellant could qualify under Door 7 if he 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.

At the time of this reassessment, the Appellant was not currently being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility. As such, he does not qualify under Door 7. In addition, it appears that the services the Appellant had previously received from the waiver agency—homemaking and personal care services—are available through the Department of Human Services Home Help Program.

Based on the information at the time of the LOC determination, the Appellant did not meet the Medicaid nursing facility level of care criteria. This does not imply that the Appellant does not need any assistance, only that he is not eligible to receive ongoing services through the MI Choice Waiver. Accordingly, the waiver agency properly determined that the Appellant was still not eligible for MI Choice Waiver services.

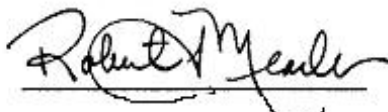

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DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 10/03/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 State Office of Administrative Hearings and Rules for the Department of Community Health 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.