

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-51303 EDW
Case No. 74498665

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 and care provider, appeared and testified on Appellant's 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 insulin-dependent diabetes mellitus, coronary heart disease, hypertension, peripheral vascular disease, and arthritis. (Exhibit 1, pages 15, 21-22).
2. Appellant is enrolled in and has been receiving MI Choice waiver services through ██████████. (Testimony of ██████████; Testimony of ██████████).
3. MORC 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 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 7-14; 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 5).
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, ██████████ provided evidence that on ██████████, ██████████ staff completed a Michigan Medicaid Nursing Facility Level of Care Determination to determine if Appellant still met criteria for the MI Choice waiver program. The ██████████ staff subsequently determined that Appellant was no longer be eligible for the MI Choice waiver program.

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)

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)

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.

(Exhibit 1, page 11)

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

(Exhibit 1, page 11)

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

(Exhibit 1, page 12)

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.

(Exhibit 1, page 13)

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)

In this case, Appellant was previously found to be eligible for MI Choice services through Door 1 and that is the only Door at issue here as Appellant’s representative does not make any arguments or provide any evidence even suggesting that Appellant meets the criteria of any other doors.

With respect to Door 1, ██████████ staff determined, at the reassessment completed on ██████████, that Appellant was no longer eligible for MI Choice services through that Door. According to Social Worker ██████████’s and RN ██████████, they made that determination

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after Appellant demonstrated her ability to transfer without difficulty and reported, through an interpreter, that she was independent in bed mobility, eating, toilet use. (Testimony of [REDACTED]; Testimony of [REDACTED]). Appellant's representative, on the other hand, testified that, while Appellant can eat on her own, Appellant is dependent on her assistance for bed mobility, toilet use, and transferring. (Testimony of [REDACTED]). Appellant's representative also testified that the [REDACTED] staff had Appellant stand up while Appellant's representative was out of the room and that Appellant was calling for help and almost falling down when her representative returned. (Testimony of [REDACTED]).

Significantly, Appellant's representative based much of her testimony and argument on Appellant's kidney problems and the effect those problems are having on Appellant's health and functioning. (Testimony of [REDACTED]). However, this Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information available at the time and Appellant's representative testified that she and her mother only found out about Appellant's kidney problems recently and after the decision in this case. Appellant's other medical conditions are undisputed, but [REDACTED] credibly testified that she determined that Appellant's condition had stabilized at the time of the reassessment. (Testimony of [REDACTED]).

Moreover, this Administrative Law Judge also finds the Waiver Agency's witnesses to be more credible as to what occurred during the home visit and reassessment. [REDACTED] and [REDACTED] both consistently and thoroughly testified regarding what they were told during the reassessment, what they observed regarding Appellant's ability to transfer and ambulate, and how they discussed Home Help Services (HHS) with Appellant as an alternative to the MI Choice program. (Testimony of [REDACTED]; Testimony of [REDACTED]). Appellant's representative disputes much of that testimony regarding Appellant's abilities, but she concedes that Appellant is independent with respect to eating (Testimony of [REDACTED]) and her testimony that Appellant was endangered by having to demonstrate an ability to transfer is unsupported. Additionally, Appellant's representative's testimony was inconsistent regarding what she was referred to regarding HHS. [REDACTED] at first testified that there was no discussion regarding HHS. (Testimony of [REDACTED]). Subsequently, she testified that she was informed about HHS and, in fact, has an application for HHS pending. (Testimony of [REDACTED]). Given Appellant's representative's inconsistent statements, as well as the credible testimony of [REDACTED] staff, this Administrative Law Judge finds the Waiver Agency's witnesses to be more credible as to what occurred during the home visit and reassessment. Consequently, this Administrative Law Judge accepts the testimony of [REDACTED] and [REDACTED] that Appellant reported, through an interpreter, that Appellant was independent in bed mobility, eating, and toilet use. This Administrative Law Judge also accepts their testimony that Appellant demonstrated her ability to transfer without any difficulty.

Therefore, weighing the above evidence in this case, this Administrative Law Judge finds that the preponderance of evidence demonstrates that Appellant did not meet the requirements for any Door on the Medicaid Nursing Facility Level of Care Determination

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Tool at the time she was deemed ineligible and, therefore, she is not eligible for MI Choice program eligibility. Accordingly, the Waiver Agency's decision was proper.

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: 10/26/2011

***** 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.