

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-55108 EDW
Case No. 77139705

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. ██████████, Nursing Supervisor, represented the Department of Community Health's Waiver Agency, the ██████████ Area Agency on Aging ("Waiver Agency" or "AAA"). ██████████, Social Work Supervisor, and ██████████, Eligibility Specialist, 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 who reports suffering from irritable bowel syndrome, back problems, and a history of polio. (Exhibit 1, page 3).
2. 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.
3. On ██████████, Appellant referred herself for the MI Choice waiver program. (Exhibit 1, page 3). However, at her request, no intake was completed until ██████████. (Exhibit 1, page 10).

4. On ██████████, AAA staff completed a Nursing Facility Level of Care (NFLOC) determination by telephone and found that Appellant was ineligible for the waiver program. (Exhibit 1, pages 4-9).
5. That same day, AAA sent Appellant a notice of the denial of her application. (Exhibit 1, page 14).
6. On ██████████, AAA staff completed a face-to-face NFLOC determination and an imminent risk assessment. Once again, Appellant was found to be ineligible for the waiver program. (Exhibit 1, pages 18-24).
7. On ██████████, AAA also sent Appellant another notice of denial for her application. (Exhibit 1, page 16).
8. On ██████████, the Department received Appellant's request for an administrative hearing. In that request, Appellant asserts that physicians have concluded that she is disabled and that, therefore, she should be eligible for the program. (Exhibit 1, page 2).

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.

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 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 NFLOC 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 completed both a face-to-face NFLOC determination and an imminent risk assessment. Appellant was found to be ineligible for the waiver program. (Exhibit 1, pages 18-24).

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

(Exhibit 1, page 22)

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 23)

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 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 23)

Door 4
Treatments and Conditions

Scoring Door 4: The applicant must score “yes” in at least one of the nine categories and have a continuing need to qualify under Door 4.

- 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 23)

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The applicant must have required at least 45 minutes of active [Speech Therapy], [Occupational Therapy] or [Physical Therapy] (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5

(Exhibit 1, page 24)

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.

(Exhibit 1, page 24)

Door 7
Service Dependency

An applicant could qualify under Door 7 if she is a “**Program participant for at least one year** and requires ongoing services to maintain current functional status.” (Exhibit 1, page 24 (emphasis in original)).

In this case, Appellant appears to argue that she should be deemed eligible for the waiver program solely because her doctor has found that she is disabled. (Testimony of Appellant). However, the Waiver Agency is required to use the NFLOC tool in determining eligibility for the waiver program and, in order to be found eligible, Appellant must meet the requirements of at least one Door. Appellant’s doctor’s opinion is not dispositive.

During the hearing, this Administrative Law Judge discussed all 7 doors with Appellant and Appellant does not appear to dispute the Waiver Agency’s specific findings regarding those doors. Appellant also testified that she is not at risk of going into a nursing home and that she can generally take care of herself, although she does have bad days. (Testimony of Appellant). Appellant further testified that she is only seeking assistance with cleaning and shopping. (Testimony of Appellant).

Given Appellant’s testimony, she has failed to meet her burden of demonstrating by a preponderance of the evidence that the Waiver Agency erred by finding her ineligible. Accordingly, the Waiver Agency’s decision is sustained.

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: 11/23/2011

***** 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.