

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-11767 EDW
Case No. 87847440

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. ██████████, Program Manager, represented the Department of Community Health's Waiver Agency, the ██████████, Inc. ("Waiver Agency" or ██████████). ██████████, supports coordinator/social worker, and ██████████, supports coordinator/registered nurse, also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's services through 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 woman who has been diagnosed with hypertension, arthritis, and depression. (Exhibit 1, pages 17, 24-25).
2. ██████████ 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. Appellant was enrolled in and had been receiving MI Choice waiver services through ██████████. (Exhibit 1, page 35).
4. On ██████████, ██████████ staff completed a reassessment and

redetermination with Appellant. (Exhibit 1, pages 5-33). Subsequently, ██████████ 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, page 33; Testimony of ██████████).

5. On ██████████, ██████████ sent Appellant a notice that it was terminating her services because she no longer meets the medical eligibility criteria to be in the waiver program. The effective date of the termination from the program was identified as ██████████. (Exhibit 1, page 35).
6. On ██████████, the Department received Appellant's request for an administrative hearing.

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, October 1, 2011, 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 the 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* (Field Definition Guidelines).

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, ██████████ provided evidence that on ██████████, ██████████ staff completed a NFLOC determination to determine if Appellant still met criteria for the MI Choice waiver program. ██████████ subsequently determined that Appellant was no longer eligible for the MI Choice waiver program because she does not satisfy the criteria for any of the 7 Doors.

During the hearing, Appellant's representative appeared to argue that his mother satisfies the criteria for Doors 1, 2, and 7. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's decision should be sustained.

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 7)

In this case, ██████████ testified that, while it was difficult to get Appellant or her son to provide information, she and ██████████ were able to complete the NFLOC. (Testimony of ██████████). Regarding Door 1, ██████████ testified that she marked Appellant as independent in bed mobility, transfers, toilet use and eating because of what Appellant and her son reported. (Testimony of ██████████). Both ██████████ and ██████████ also testified that they observed Appellant moving around and sitting down without difficulty. (Testimony of ██████████; Testimony of ██████████).

In response, Appellant's son/representative testified that Appellant is not independent with respect to any of those tasks. According to ██████████, Appellant cannot walk by herself and, even using a wall or walker for support, she falls down everyday. (Testimony of ██████████). Appellant's son also testified that Appellant will pee in her bed without assistance and they installed a bedside toilet two months prior to the hearing. (Testimony of ██████████). Appellant's son further testified that Appellant's hands shake and she cannot hold utensils or eat by herself. (Testimony of ██████████).

However, while Appellant's son/representative testified clearly regarding Appellant's limitations, he also testified that he does not recall if those limitations were discussed during the assessment or what exactly he told ██████████ and ██████████. (Testimony of ██████████). ██████████ and ██████████, on the other hand, both credibly and expressly testified that Appellant's son specifically told them that Appellant was independent with respect to bed mobility, transfer, toilet use and eating. (Testimony of ██████████; Testimony of ██████████).

This Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information it had at the time it made that decision. Here, given the contrast between the uncertain nature of Appellant's son's testimony and the definite testimony of ██████████ and ██████████, it appears that the information available at the time provides that that Appellant did not meet the criteria for Door 1 and Appellant failed to meet her burden of proving by a preponderance of the evidence that the Waiver Agency erred. Accordingly, the Waiver Agency's decision with respect to that door is sustained.

Door 2 Cognitive Performance

Scoring Door 2: The applicant must score under one of the following three options to qualify under Door 2.

2. "Severely Impaired" in Decision Making.
3. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."
4. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

(Exhibit 1, page 8)

With respect to Door 2, ██████████ and ██████████ found that Appellant's short-term memory was okay and, while she is only modified independent in her cognitive skills for daily decision-making, Appellant has no difficulty making herself understood. (Testimony of ██████████; Testimony of ██████████). Given those findings, the ██████████ staff also concluded that Appellant did not meet the criteria to pass through Door 2.

Appellant's son/representative testified that his mother has a severe memory problem as a normal result of growing old. (Testimony of ██████████). Specifically, ██████████ testified that, contrary to ██████████'s testimony that Appellant could recall who the president was and Appellant's own birthday, she cannot remember such things. (Testimony of ██████████).

Nevertheless, even if Appellant does have a memory problem as her son testified to, she would still have to be sufficiently impaired in her cognitive skills for daily decision-making or making herself understood as described above. Appellant's representative makes no such claims in this case and relies solely on Appellant's purported memory problems. However, memory problems alone are insufficient to satisfy the criteria for Door 2.

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 11 (emphasis in original)).

In this case, it is undisputed that Appellant has been in the waiver program for a least and year and, consequently, the only question remaining is whether Appellant requires the ongoing services to maintain her current functional status.

██████████ testified that Appellant does not need the waiver program's services to maintain her current functional status because her needs can be met through the Department of Human Services' Home Help Program. (Testimony of ██████████). She also testified that she referred Appellant to the Home Help Program and provided Appellant and Appellant's son with information regarding those services. (Testimony of ██████████).

Appellant's son acknowledges that they received information regarding the Home Help Program, but they did not act on it because the MI Choice Waiver program would be preferable. (Testimony of ██████████). Nevertheless, given the availability of HHS, the Waiver Agency's decision should be sustained. The MI Choice program is the payer of last resort and Appellant has other fund sources for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly terminated Appellant's MI Choice waiver services.

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

**Docket No. 2012-11767 EDW
Decision and Order**

cc:



Date Mailed: 2/6/2012

***** 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.