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:

Docket No. 2012-21325 EDW

[redacted],

Appellant

_____/

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 Thursday, [redacted]. The Appellant, [redacted], was present and testified on her own behalf. [redacted], Waiver Services Director, appeared on behalf of the [redacted] Area Agency on Aging, the Department's MI Choice Program Waiver Agency (AAA or Waiver Agency). [redacted], R.N., Care Coordinator, and [redacted], Social Worker, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly determine that the Appellant was no longer 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 [redacted] years old and had been a participant in MI Choice Waiver Services since [redacted]. (Exhibit A, p 5; Testimony)

2. The Appellant has multiple diagnoses, including agoraphobia, panic attacks, depression, social phobia, and bi-polar disorder. (Exhibit 2; Testimony)

3. When the Appellant initially qualified for MI Choice Waiver services, she did so through Door 2 because her decision making ability was severely impaired. (Testimony)

4. On [redacted], the waiver agency reassessed the Appellant and determined that the Appellant was no longer eligible for waiver services

because she did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. Specifically, the Waiver Agency determined that Appellant no longer met eligibility criteria through Door 2 because her decision making ability had improved to "Modified Independent". (Exhibit 1, p 8). Appellant was provided a Request for Hearing form following the completion of the assessment.

5. The Appellant's request for a formal, administrative hearing was received by the Michigan Administrative Hearing System on [redacted]. (Exhibit 2). In her request for hearing, Appellant stated, "My actual needs have not changed. I am reviewed bi-monthly. Who knew having a good day would result in termination? Past reviews after reading them scared me to death. To me it sounded diar [sic]. Afraid of loss of independence, I jazzed up last meeting. Coupled with just wanting it over with. The less I expanded on feelings, the sooner it would be over. In reality, [redacted] is the worst of the year. I try to glaze over issues in order to avoid feeling so bad." (Exhibit 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 (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 Region II Area Agency on Aging, 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 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 no limitations with activities of daily living. 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."

[redacted], R.N., care coordinator, testified that Appellant previously met eligibility requirements through Door 2 because her decision making was severely impaired. However, [redacted] indicated that Appellant's condition had improved and she now fell into the "Modified Independent" category, which would not qualify her for services. [redacted] also referred to Appellant's progress notes, which also indicate that she was doing much better and was reporting no problems. (Exhibit 1, p 3). Appellant has not reported any short-term memory problems in the past and did not during the assessment.

Appellant testified that when people come to visit her, she cannot wait for them to leave and she will lie in order to speed up their departure. Appellant indicated that when [redacted] came in [redacted] to do her reassessment, she acted as if she was better then she really was because she wanted [redacted] to leave and because she was worried that her condition was worsening to the point that she would lose control.

Given the information [redacted] had to go on at the time of the assessment, she properly concluded that Appellant's decision making fell into the "Modified Independent" category. The progress notes from the reassessment indicate, in part, "She is currently receiving CLS 6 hrs/wk through self-determination. [redacted] verbalized during the assessment that she is capable of doing these tasks on her own, and frequently does." (Exhibit 1, p 3). As such, [redacted] properly determined that Appellant did not meet eligibility criteria through 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 reported 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.

No evidence was presented indicating that the Appellant has ever received speech, physical, or occupational 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 she 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 assessment, the Appellant had been receiving MI Choice Waiver services for slightly less than one year. (Appellant began receiving services on [redacted], and this assessment was completed on [redacted]). However, even if Appellant had been receiving MI Choice Waiver services for at least one year, it does not appear from the evidence that Appellant requires ongoing services to maintain her current functional status give that she reported improvement in her condition. 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 she is not eligible to receive ongoing services through the MI Choice Waiver. Accordingly, the waiver agency properly determined that the Appellant was not eligible for MI Choice Waiver services.

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 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 Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 2/6/2012

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.