

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-23928 EDW

Case No. ██████████

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. ██████████, Appellant's husband, also testified on Appellant's behalf. ██████████, Waiver Services Director, represented the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████).

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 a ██████ year-old woman who has been diagnosed with diabetes, neuropathy, lupus, fibromyalgia, arthritis, kidney problems, and a history of back surgeries. (Exhibit 1, pages 6; Testimony of Appellant).
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 is enrolled in and has been receiving MI Choice waiver services through ██████ since at least ██████████. (Testimony of Appellant; Testimony of ██████). Specifically, Appellant has been receiving personal care, homemaker services and home-delivered meals. (Exhibit 4, page 1).

4. On ██████████, ██████ staff completed a reassessment and redetermination with Appellant. (Exhibit 6, pages 1-7). 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 5, pages 1-2).
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 4, page 1).
6. On ██████████, the Department received Appellant's request for an administrative hearing. In that request, Appellant asserts that she is in pain and requires the services she was receiving before. (Exhibit 3, pages 1-3).

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, January 1, 2012, 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 2.2 of the MI Choice Waiver chapter of the Medicaid Provider Manual 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. The NFLOC is available online through Michigan's Single Sign-on System. (Refer to the Directory Appendix for website information.)

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 its staff completed a NFLOC determination to determine if Appellant still met criteria for the MI Choice waiver program. The ██████ staff 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.

Appellant disputes that finding. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's decision on all seven doors 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 6, page 2)

Regarding Door 1, ██████ staff marked Appellant as being independent with respect to bed mobility, transfers, toilet use and eating. However, no one from that agency testified as to how the determination was made.

Nevertheless, the Waiver Agency's decision with respect to Door 1 should still be affirmed. Appellant testified regarding her problems transferring, which suggests that she needs some assistance in that area, but she does not have trouble with bed mobility once she gets into bed. Similarly, Appellant also testified that she is independent in toilet use and eating. Requiring assistance with transferring is not enough on its own to pass through Door 1. Accordingly, the Waiver Agency's decision with respect to Door 1 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 6, page 3)

With respect to Door 2, there is dispute over whether Appellant suffers from any memory problems. ██████ staff marked Appellant as not having such a problem, but no one from that agency testified as to how that determination was made. Appellant testified that she was never asked about her memory. Appellant and her husband also testified that Appellant does indeed have a bad memory.

Nevertheless, even if Appellant does suffer from memory problems, memory problems alone are insufficient to satisfy the criteria for Door 2. Here, there is no testimony or evidence suggesting that Appellant has any cognitive problems beyond memory problems. Accordingly, the Waiver Agency's decision with respect to Door 2 is sustained.

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 6, page 4)

It is undisputed in this case that Appellant generally goes to the doctor once a month and does not satisfy the criteria for Door 5. Appellant does not recall if she visited the doctor more than normal during the relevant time period.

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 6, page 4)

Here, while Appellant testified that she has some breathing treatments, there is no suggestion or evidence that Appellant meets the criteria to pass through Door 4.

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 6, page 5)

It is undisputed in this case that Appellant does not satisfy the criteria for 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.

(Exhibit 6, page 6)

Here, while Appellant testified that she once resisted taking some medication due to concerns she might suffer a reaction and that she suffered from delusions twenty years ago, there is no suggestion or evidence that Appellant meets the criteria to pass through Door 6.

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 6, page 6 (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.

Appellant testified that she requires the ongoing services to maintain her current functional status because she has significant health problems and her care giver does significant cleaning for her, in addition to doing the laundry and shopping for Appellant.

The Waiver Agency’s representative asserts that Appellant has only remained in the program through Door 7 in the past and that Door 7 is not a door that can be used for a long period of time without other medical problems. However, Respondent cannot point to any time limitation for Door 7 found in policy.

The Waiver Agency’s representative also 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. Given the potential availability of Home Help Services, the Waiver Agency’s decision should be sustained. The MI Choice program is the payer of last resort and Appellant appears to have other fund sources for services she requires.

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**.

[REDACTED]

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 2/27/2012

***** 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.