

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2012-27970 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's daughter, appeared and testified on Appellant's behalf. ██████████, registered nurse, represented the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or ██████████). ██████████ and ██████████, both managers at ██████████, 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 arthritis, hypertension, and diabetes mellitus. Appellant's right leg was also amputated. (Exhibit B, pages 1, 6-7).
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 ██████████ (Exhibit D, pages 1-6)
4. On ██████████, ██████ staff completed a reassessment and redetermination with Appellant. 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 A, pages 1-9; Exhibit B, pages 1-14; 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 G, pages 1-2).¹
6. On ██████████, the Department received a request for hearing signed by both Appellant and her representative. (Exhibit I, 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.

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.

¹ By making the termination effective on the same day of the notice itself, the Waiver Agency failed to provide Appellant with the proper advance notice required by law. However, as the termination was not implemented due to Appellant's appeal, the error is harmless.

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 A, page 3)

Here, Appellant's representative testified that Appellant occasionally urinates on herself when she cannot make it to bathroom in time, but that she independent with respect to all other Door 1 tasks. Accordingly, it is undisputed that Appellant does not meet the criteria for 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.

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 A, page 4)

██████████ testified that, while Appellant is modified independent in her decision making, Appellant also passed a memory test and made herself understood without difficulty during the assessment. (Testimony of ██████████)

Appellant's representative similarly testified that Appellant has no memory problems, but that her depression affects her decision-making. Appellant's representative further testified at one point that Appellant does have a difficulty making herself understood, but Appellant's representative also corrected that testimony later.

Given the agreement between the two sides, it is undisputed that Appellant does not satisfy the criteria for 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 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 A, page 5)

It is undisputed in this case that Appellant generally goes to the doctor every three months and that her schedule does not usually satisfy the criteria for Door 3. Appellant's representative does not recall if Appellant 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 A, page 5)

Here, while Appellant's representative testified that Appellant has a need for daily insulin, there is no record of order changes or evidence suggesting 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 A, page 6)

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 A, page 7)

It is undisputed in this case that Appellant does not satisfy the criteria for Door 6.

Door 7
Service Dependency

Scoring Door 7: The applicant must be a current participant and demonstrate service dependency to qualify under Door 7.

(Exhibit A, page 7)

In this case, the sole issue with respect to Door 7 is whether Appellant can demonstrate a service dependency. In finding that she does not have such a dependency, ██████████ noted that the program does not encompass insulin injection and that Appellant has strong informal supports, including care from two of her children and twelve of her grandchildren.

Appellant's representative does not dispute that Appellant has strong informal supports and that her family helps take care of her. Appellant's representative does, however, argue that Appellant needs the program's assistance as well and that services should not be discontinued simply because of the help provided by family members.

Given the undisputed and significant support provided by Appellant's family, the Waiver Agency's decision with respect to Door 7 must be sustained. Appellant does not satisfy the criteria for any other door and it does not appear that she requires the waiver services to maintain her current level of functioning. The burden is on Appellant to show by a preponderance of the evidence that the Waiver Agency erred and Appellant cannot meet that burden in this case.

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.

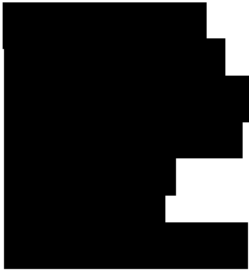
IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

**Docket No. 2012-27970 EDW
Decision and Order**

cc:



Date Mailed: 4/4/2012

***** 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.