

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 2012-34829 EDW

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's friend, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████ represented the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency" or "Senior Alliance").

ISSUE

Did the Waiver Agency properly deny Appellant's request for 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, a history of knee surgeries, high blood pressure, depression, insomnia and anxiety. (Exhibit 1, page 3; Testimony of ██████; Testimony of ██████).
2. Senior Alliance 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 ██████████, a social worker called Senior Alliance and requested waiver services on behalf of Appellant. ██████████ then completed an assessment and 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, pages 3-8; Testimony of ██████████).

4. On ██████████, Senior Alliance sent Appellant a notice that it was denying her request for waiver services as she did not meet the medical eligibility criteria to be in the waiver program. (Exhibit 2, page 9).
5. On ██████████, the Department received a Request for hearing signed by both Appellant and her representative. (Exhibit 2, 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.

Here, Senior Alliance provided evidence that its staff completed a NFLOC determination to determine if Appellant met the criteria for the MI Choice waiver program. The Senior Alliance staff subsequently determined that Appellant was not eligible for the MI Choice waiver program because she did not satisfy the criteria for any of the 7 Doors.

During the hearing, this Administrative Law Judge discussed the 7 Doors with Appellant and Appellant's representative. As discussed below, Appellant does not satisfy the criteria for any of the 7 Doors and the Waiver Agency's decision should be affirmed.

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

Here, Appellant's representative testified that Appellant needs assistance with taking a bath, cleaning and preparing meals. However, she also conceded that Appellant is independent with respect to all Door 1 tasks. Accordingly, Appellant did 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."

██████████ testified that Appellant has some memory problems and difficulties making decisions. However, she could not testify as to what Senior Alliance was told during the intake and Appellant has never seen a doctor with regard to any memory problem. ██████████ expressly testified that she was told that Appellant does not have any impairment in decision making, memory or making herself understood. Given the evidence regarding the information provided during the intake, Appellant did 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.

Appellant generally goes to the doctor once a month and 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 and there is no evidence suggesting that Appellant meets the criteria for Door 3.

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

Here, based on Appellant's representative's testimony regarding Appellant's medical conditions and needs, it is undisputed that Appellant does not satisfy the criteria for 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

Here, based on Appellant's representative's testimony, 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.

Here, based on Appellant's representative's testimony, 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.

Appellant is not a current participant in the waiver program and, consequently, does not satisfy the criteria for Door 7.


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Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied 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

cc:



Date Mailed: 5-16-12

***** 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.