

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-39337 EDW

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████████████████████
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 appeared and testified on her own behalf. ██████████, Waiver Services Director, represented the Department of Community Health's Waiver Agency, the Region II Area Agency on Aging ("Waiver Agency" or "AAA"). ██████████, case manager, and ██████████ supports coordinator, 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 mitral stenosis with insufficiency, congestive heart failure, coronary heart disease, arthritis, osteoporosis, a stroke, seizure disorder, transient ischemic attack, anxiety, depression. (Exhibit 1, pages 13-14, 34).
2. AAA 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 AAA since at ██████████ (Exhibit 1, pages 33-39; ██████████).
██████████).
4. On ██████████, AAA staff completed a reassessment and

redetermination with Appellant. Subsequently, AAA 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 8-20; ██████████).

5. On ██████████, AAA 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 32).
6. On ██████████ the Michigan Administrative Hearings System (MAHS) received a Request for Hearing from Appellant with respect to the termination of services. (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, AAA provided evidence that its staff completed a NFLOC determination to determine if Appellant still met criteria for the MI Choice waiver program. The AAA 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.

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 35)

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 36)

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 1, page 37)

Door 4
Treatments and Conditions

Scoring Door 4: The applicant must score “yes” in at least █████ 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 1, page 37)

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 1, page 36)

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 1, page 39)

Door 7
Service Dependency

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

(Exhibit 1, page 39)

In this case, the Administrative Law Judge discussed each of the 7 doors with Appellant and Appellant's answers revealed that she did not meet the criteria for any of the doors either at the time of the Waiver Agency's decision or at the time of the hearing. (Testimony of Appellant). While Appellant had previously passed through Door 1 (Exhibit 1, pages 34-39), each assessment stands on its own and AAA staff had found that there was change in what Appellant could do with respect to Door 1 tasks (Exhibit 1, page 27). Appellant agreed with the Waiver Agency's findings. (Testimony of Appellant).

Given the undisputed findings and assessment, the Waiver Agency's decision with respect eligibility must be sustained. Appellant does not satisfy the criteria for any 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

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.