

**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:

██████████

Appellant

Docket No. 2012-48826 EDW
Case No. ██████████

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████ Appellant's ██████████ appeared and testified on Appellant's behalf. Appellant also appeared but did not offer any testimony.

██████████ Director, Long-Term Care Programs, U.P. Area Agency on Aging UPCAP, represented the Department's Waiver Agency. (Waiver Agency or UPCAP). ██████████ Social Worker Care Manager and ██████████ Care Manager, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly determine the Appellant was not eligible for 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. The Appellant has been enrolled in the MI Choice Waiver Program since ██████████
2. The Waiver Agency 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. The Appellant is a ██████████ who is diagnosed with general muscle weakness, congestive heart failure, coronary heart disease, hypertension, peripheral vascular disease,

anxiety, depression, diabetes mellitus, lumbar disc displacement, surgical convalescence, history of falling, chronic liver disease, ischemic optic neuropathy, and agina pectoris. [REDACTED]

4. The Appellant lives with her [REDACTED] informal supports include Appellant's [REDACTED]. [REDACTED]
5. On [REDACTED] a reassessment of the Appellant was done by the Waiver Agency to determine continued eligibility for the MI Choice Waiver Program. [REDACTED]
6. On [REDACTED] the Waiver Agency sent Appellant an Adequate Action Notice informing Appellant that it determined she was no longer eligible for the MI Choice Waiver Program and advised her that services would be terminated effective twelve (12) days from the date of the notice. [REDACTED]
[REDACTED]
7. On [REDACTED] the Michigan Administrative Hearing System received the Appellant's request for an administrative hearing. [REDACTED]

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 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 Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case MORC, 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)*

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as

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“medical assistance” under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. 42 CFR 430.25(c)(2)

Home and community based services means services not otherwise furnished under the State’s Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. 42 CFR 440.180(a).

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization. 42 CFR 440.180(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

██████████ Social Worker Care Manager, testified that Appellant informed her that she was totally independent with bed mobility and did not need any help in this area. ██████████ also testified that Appellant reported needing no assistance with transfers as she was able to get up from a sitting position. ██████████ testified that Appellant reported needing supervision with toilet use, but reported independence with eating. ██████████ testified that Appellant scored 4 points under Door 1, so she did not qualify through 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."

██████████ testified that Appellant indicated that she did not have problems in this area and Appellant was able to recall all three memory words from the short term memory test without hesitation after 10 minutes. ██████████ also testified that for the cognitive skills for daily decision making, Appellant informed her that she did not have difficulty making decisions regarding daily activities and that this was confirmed by her ██████████. Therefore, Appellant did not qualify 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.

██████████ testified that Appellant did have two doctor visits within the past 14 days, but that those visits did not result in physician order changes. 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

██████████ testified that the Appellant had not 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.

overnight stay in the hospital.

[REDACTED] Long-Term Care Programs at UPCAP, testified that if Appellant's condition had deteriorated as much as [REDACTED] indicated, that she could request another referral and be reassessed. [REDACTED] noted, however, that the LOCD is based on the time it is conducted and they are bound by what is reported during the assessment.

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 was not eligible to receive ongoing services through the MI Choice Waiver at that time. Accordingly, the waiver agency properly determined that the Appellant was not eligible for MI Choice Waiver services.

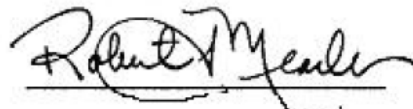
The Appellant did not prove by a preponderance of evidence that the Waiver Agent erred in finding that she was no longer eligible for the MI Choice Waiver Program. Therefore, the Appellant is not eligible for the MI Choice Waiver Program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly determined the Appellant was not eligible for the MI Choice Waiver Program.

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: 6/29/2012

Harper, Donelda M.
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***** 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.