

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:

Docket No. 2012-50202 REM
No. [REDACTED]

[REDACTED] Case

Appellant

_____ /

AMENDED 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 a Stipulation and Order To Remand To Administrative Law Judge For Rehearing, dated [REDACTED]. A hearing was originally held in this matter on [REDACTED]. A Decision and Order was mailed on [REDACTED]. A Request for Rehearing from the Appellant was received on [REDACTED]. In lieu of a rehearing, the undersigned issued an Amended Decision and Order on [REDACTED].

After due notice, an in-person hearing was held on [REDACTED]. Attorney [REDACTED] appeared on behalf of the Appellant, [REDACTED] (Appellant). Appellant appeared and testified on her own behalf. [REDACTED] Care Management Director, Region IV Area Agency on Aging, represented the Department's Waiver Agency. (Waiver Agency or Respondent). [REDACTED], Social Work Care Manager; [REDACTED] Nurse Care Manager; [REDACTED], Supervisor of Operations, Care Management Department; and [REDACTED] Quality Management Supervisor, appeared as witnesses for the Department.

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 was enrolled in the MI Choice waiver program on [REDACTED] and continued as a participant in the program until [REDACTED], when her participation was terminated following an administrative hearing. (Exhibit A, pp 8-13, 21)

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2. The Appellant is a [REDACTED] born [REDACTED] (Exhibit A, p 75)
3. Appellant's diagnoses include congestive heart failure, coronary heart disease, chronic obstructive pulmonary disease (COPD), arthritis, stroke/cva, seizure disorder, and cancer. (Exhibit A, pp 80-81)
4. The Appellant lives on her own in a one story trailer. Appellant's parents live in the same trailer park and come by to assist Appellant as needed, however, Appellant's parents are older and the level of assistance they can provide is limited. Appellant's sister also moved into the trailer park and lives right across the street. Appellant's son is also able to provide informal supports, but his assistance is limited because he lives in [REDACTED]. Appellant also receives informal support from her ex-husband. (Exhibit A, p 77).
5. 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.
6. Effective [REDACTED] all MI Choice waiver applicants are required to be assessed using the MDCH approved Level of Care Assessment Tool. (Exhibit A, Attachment M, pp 39-73).
7. On [REDACTED], a Waiver Agency Social Work Care Manager conducted a reassessment of Appellant. (Exhibit A, pp 75-88). Following the reassessment, the Social Work Care Manager believed that Appellant no longer met the Level of Care Determination (LOCD) requirements for nursing home level of care. (Exhibit A, p 88). The Social Work Care Manager then met with her supervisor to discuss Appellant's case. The supervisor scheduled another in-person meeting with Appellant for [REDACTED] to include both the Social Work Care Manager and an RN Care Manager. (Testimony)
8. On [REDACTED] the Social Work Care Manager and RN Care Manager completed an in-person MDCH Level of Care Determination with Appellant. (Exhibit A, pp 89-100).
9. The Social Work Care Manager and RN Care Manager determined that Appellant was ineligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that she did not need a Nursing Facility Level of Care and she could receive services from DHS HHS if needed. (Exhibit A, p 96, Testimony).
10. On [REDACTED] the Waiver Agency provided Appellant with a notice that it determined she was not eligible for the MI Choice waiver program. The notice included Appellant's rights to a fair hearing. (Exhibit A, p 98).

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11. On [REDACTED] the Michigan Administrative Hearing System received the Appellant's request for an administrative hearing. (Exhibit 1).
12. A hearing was held on [REDACTED] and a Decision and Order was mailed on [REDACTED] affirming the Waiver Agency's action. (Exhibit A, pp 8-13). A Request for Rehearing from the Appellant was received on [REDACTED]. In lieu of a rehearing, the undersigned issued an Amended Decision and Order on [REDACTED] (Exhibit A, pp 14-21)
13. Following Appellant's appeal to Circuit Court, a Stipulation and Order To Remand To Administrative Law Judge For Rehearing was entered on February 28, 2012. (Exhibit 2)

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.

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. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

The Medicaid Provider Manual, Nursing Facilities Coverages Section, July 1, 2011, 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 4.1 of the Medicaid Provider Manual Nursing Facility Coverages Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination Tool. The LOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. A written form of the LOC, as well as field guidelines are found in the *MDCH Nursing Facility Eligibility Level of Care Determination, Pages 1-9, 3/07/05* and *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines, Pages 1-19, 3/15/05*.

The Waiver Agency provided evidence that on [REDACTED] Waiver Agency intake staff completed an in-home Michigan Medicaid Nursing Facility Level of Care Determination to determine if the Appellant met criteria for the MI Choice waiver program. Waiver Agency staff determined that the Appellant was ineligible for the MI

Choice waiver program because the Level of Care Assessment Tool indicated that she did not need a Nursing Facility Level of Care and she could receive services from DHS HHS if needed. (Exhibit A, pp 89-100).

The Level of Care Assessment Tool consists of seven service entry Doors. (Exhibit 1, Attachment G). 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. The Waiver Agency presented evidence that based on the Appellant's answers during the in-person assessment, and their observations, she did not meet any of the criteria for Doors 1 through 7.

Door 1
Activities of Daily Living (ADLs)

LOC page 3 of 9 provides that the applicant must score at least six points to qualify under Door 1.

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

At the LOCD meeting on ██████████ Appellant reported that she was independent with bed mobility, transfers, toilet use, and eating. As such, Appellant did not qualify under Door 1. At the rehearing on ██████████ Appellant testified that as of ██████████ she used a walker and needed assistance getting in to the shower and with bathing. Appellant indicated that she did not report this information to the Waiver Agency representatives because she did not understand that the Waiver Agency representatives were asking if she could do these things independently. This is inconsistent with Appellant's testimony at the original hearing on ██████████ where Appellant testified that the Waiver Agency staff never asked her about bed mobility, transfers, toilet use or eating. At the rehearing on ██████████ Appellant testified that she was just answering yes to all the questions asked by the Waiver Agency representatives because she did not understand the questions.

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."

Appellant's short-term memory was found to be okay, she was independent in cognitive skills related to decision-making, and she was able to make herself clearly understood. As such, Appellant did not qualify under Door 2.

Door 3
Physician Involvement

The LOC indicates that to qualify under Door 3 the applicant must

...[M]eet either of the following to qualify under

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 had no physician visits or physician orders within 14 days of the assessment. As such, Appellant did not qualify under Door 3.

Door 4
Treatments and Conditions

LOC page 5 indicates that 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

The Appellant testified that she has been oxygen dependent for many years and that she uses oxygen daily as needed and always at night. However, applicants will not qualify under Door 4 when the conditions have been resolved, or they no longer affect functioning or the need for care. Here, the Waiver Agency representatives pointed out that Appellant is independent with all activities of daily living, so her need for oxygen no longer affects her functioning. The Waiver Agency representative also testified that Appellant used to be much more dependent on oxygen than she is now. As such, Appellant did not qualify under Door 4.

Door 5 **Skilled Rehabilitation Therapies**

LOC page 6 provides that the applicant must:

...[H]ave 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

No evidence was presented indicating that the Appellant had received speech, physical, or occupational therapy in the 7 days leading up to the assessment. Accordingly, the Appellant did not qualify under Door 5.

Door 6 **Behavior**

An applicant must exhibit any of the following behavior symptoms during the 7 days before the assessment: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, Resists Care. An applicant must exhibit any of the following Problem Conditions during the 7 days before the assessment: Delusions and Hallucinations. LOC page 8 provides that to qualify under Door 6 if the applicant must score under the following two options:

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.

Appellant did not report any of the listed behaviors within 7 days leading up to the assessment. Accordingly, the Appellant did not qualify under Door 6.

Door 7
Service Dependency

An applicant could qualify under Door 7 if there was evidence that she or he is currently being served in a nursing facility (and for at least one year) or by the MI Choice or PACE program, and required ongoing services to maintain her current functional status.

Here, Appellant has been on the MI Choice Waiver program for at least one year, but she does not require ongoing services to maintain her current functional status. In the six months leading up to the ██████████ assessment, Appellant had very infrequent contact with care management. (Exhibit A, p 101-105). Appellant receives very minimal IADL assistance and without services she would not be at risk for long term care placement. One of Appellant's main concerns regarding being terminated from the MI Choice Waiver program is how it will affect her Medicaid coverage. Appellant has demonstrated an ability to navigate the community for resources on her own and she has informal supports to help her. Appellant was also referred to other community resources to help her transition out of the MI Choice Waiver program. (Exhibit A, p 88). Because Appellant does not require ongoing services to maintain her current functional status, Appellant does not qualify under Door 7.

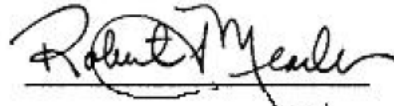
Weighing the evidence in this case the Waiver Agency provided a preponderance of evidence to show that the Appellant is not eligible for Medicaid nursing facility services and thus not eligible for the MI Choice program. The Appellant did not prove by a preponderance of evidence that she requires a Nursing Facility Level of Care and MI Choice program eligibility. The Appellant does not meet the requirements for any Door 1 through 7 on the Medicaid Nursing Facility Level of Care Determination Tool. Therefore, she is not eligible for the MI Choice program eligibility. This Administrative Law Judge must base his decision on the facts that the Waiver Agency had on hand at the time of the LOC determination. Based on that information, Appellant is not eligible for the MI Choice program. If Appellant's condition worsens, she can always request another assessment.

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.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 10-10-2012

***** 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.