

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-3872 EDW
Case No. 1444070

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 appeared and testified on his own behalf. ██████████, Appellant's daughter, also testified on his behalf. ██████████, Waiver Services Director, represented the Department of Community Health's Waiver Agency, the ██████████ Area Agency on Aging ("Waiver Agency" or "AAA"). ██████████, Supports Coordinator, also testified as a witness 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 a ██████ year-old man who has been diagnosed with coronary heart disease, chronic obstructive pulmonary disease, chronic pain, hernia issues, and a history of cancer. (Exhibit 1, page 1; Testimony of ██████).
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. Specifically, Appellant has been receiving 5 hours of services per week through the Waiver Agency's self determination program as well as a ██████████. (Exhibit 4, page 2).

██████████
Docket No. 2012-3872 EDW
Decision and Order

4. Effective November 1, 2004, all MI Choice waiver applicants are required to be assessed using the MDCH approved Level of Care Assessment Tool. See Medical Services Administration Policy Bulletin 11-27 (July 1, 2011) (hereinafter "MSA 11-27").
5. On ██████████, ██████████ completed an NFLOC determination 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 he did not qualify for such services. (Exhibit 1, pages 1-7; Testimony of ██████████; Testimony of ██████████).
6. On ██████████, AAA sent Appellant a notice that it was terminating his services because he 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 4, page 2).
7. On ██████████, the Department received Appellant's request for an administrative hearing. (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, October 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 the online Michigan Medicaid 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. A written form of the NFLOC, 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* (Field Definition Guidelines).

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 on ██████████, Parks completed a NFLOC determination to determine if Appellant still met criteria for the MI Choice waiver program. AAA subsequently determined that Appellant was no longer eligible for the MI Choice waiver program because he does not satisfy the criteria for any of the 7 Doors. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's decision 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 1, page 2)

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 3)

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 4)

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 1, page 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 1, page 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 1, page 6)

Door 7
Service Dependency

An applicant could qualify under Door 7 if she is a “**Program participant for at least one year** and requires ongoing services to maintain current functional status.” (Exhibit 1, page 6 (emphasis in original)).

Here, ██████s performed the NFLOC determination and she testified as to why Appellant does not meet the requirements to pass through any of the above doors. (Testimony of ██████). Appellant’s testimony confirmed ██████’ statements and findings with respect to Doors 1 through 6. (Testimony of Appellant).

Therefore, while Appellant did not expressly assert that he should pass through Door 7, the sole issue in this case involves that door. Moreover, it is undisputed that Appellant has been in the waiver program for a least and year and, consequently, the only question remaining is whether Appellant requires the ongoing services to maintain his current functional status.

██████ testified that Appellant does not need the waiver program’s services to maintain his current functional status because of Appellant’s informal supports and the potential availability of other programs. (Testimony of ██████). Specifically, ██████ noted that Appellant’s family was available to help him and has provided assistance in the past. (Testimony of ██████). ██████ also noted that she discussed services through the ██████ Department on Aging and the Michigan Department of Human Services with Appellant. (Testimony of ██████). Appellant has not been approved for services through other programs, but it appears that they may be available. (Testimony of ██████).

Appellant testified that he does not recall discussing any other programs with ██████, but that he would like to continue in the waiver program. (Testimony of Appellant). Appellant also confirmed that he lives with his daughters and that they assist him

Docket No. 2012-3872 EDW
Decision and Order

throughout his day. (Testimony of Appellant). According to Appellant, he requires assistance with meal preparation, laundry, and housework. (Testimony of Appellant). Appellant's daughter also testified that she assists her father with his errands. (Testimony of [REDACTED]).

Appellant bears the burden of proving by a preponderance of the evidence that the decision to terminate his services was in error. Here, given Appellant's failure to demonstrate a significant need for assistance with respect to Doors 1 through 6, as well as the limited, actual assistance provided to Appellant over 5 hours a week, the continuing availability of informal supports and the possibility of other through other programs, Appellant has failed to meet his burden. Therefore, the Waiver Agency's decision must be sustained.

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:

[REDACTED]

Date Mailed: 12/6/2011

***** 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.