

**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. 2012-60510 EDW

██████████,

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ Appellant, ██████████ (Appellant) appeared and testified on her own behalf. ██████████ LBSW, Contracts Manager, appeared on behalf of the Region 2 Area Agency on Aging, the Department's MI Choice Program Waiver Agency (Region 2 AAA or Waiver Agency). ██████████, R.N., Care Manager; ██████████ LBSW, Care Manager; and ██████████, R.N., Quality Management Supervisor, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly determine that the Appellant was no longer eligible for the MI Choice Waiver program following eligibility review?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████████ born ██████████ and has been a participant in MI Choice Waiver program for approximately six years. (Exhibit A, p 36; Testimony)
2. The Appellant has multiple diagnoses, including End Stage Renal Disease (ESRD), Hypertension, Arthritis, Depression, and Fibromyalgia. Appellant also had surgery in ██████████ on her left hand to assist with her trigger finger and tendons in her thumb. (Exhibit A, pp 43-44; Testimony)
3. Appellant lives alone in a single family home. Appellant has two sons who live within 10 miles of Appellant and can provide assistance if needed. (Exhibit A, p 39; Testimony)

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4. 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.
5. On [REDACTED] the Waiver Agency reassessed the Appellant and determined that Appellant was no longer eligible for waiver services because she did not meet the functional/medical eligibility criteria for Medicaid nursing facility level of care. (Exhibit A, pp 51-57)
6. On [REDACTED] Appellant was provided an Advance Action Notice informing her that her waiver services were being terminated effective [REDACTED] because she no longer met Nursing Facility Level of Care medical eligibility. (Exhibit A, p 4)
7. The Appellant's request for a formal, administrative hearing was received by the Michigan Administrative Hearing System on [REDACTED] (Exhibit 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 (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 eligibility for 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 Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case, the Regional Area Agency on Aging, 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)

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would

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otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(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

The Appellant was noted to be independent with all activities of daily living. As such, the Appellant does not qualify under Door 1.

Door 2
Cognitive Performance

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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 memory was noted to be okay, her cognitive skills were noted to be independent and she was able to make herself understood. Therefore, Appellant did not qualify under 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.

The Appellant reported no physician visits or physician change orders within the 14-day period leading up to the LOC Determination. 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

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I. Peritoneal or hemodialysis

The Appellant did not have any of the listed health treatments, or demonstrate any of the listed health conditions, within 14 days of the assessment. 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.

The Appellant reported no speech therapy, occupational therapy, or physical therapy in the 7 days preceding the assessment. Accordingly, the Appellant did not qualify under 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.

The Appellant reported no delusions, hallucinations, or any of the specified behaviors within seven days of the LOC Determination. Accordingly, the Appellant did not qualify under Door 6.

Door 7
Service Dependency

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

The LOC Determination provides that the Appellant could qualify under Door 7 if she or he is currently (and has been a participant for at least one (1) year) being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility, requires ongoing services to maintain current functional status, and no other community, residential

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or informal services are available to meet the applicant's needs.

Appellant has been a participant in the MI Choice Waiver Program for more than one year, but the Waiver Agency witnesses testified that Appellant did not require ongoing services to maintain her current functional status. The Waiver Agency's Quality Management Supervisor testified that when she met with Appellant on [REDACTED] Appellant was doing remarkably well. The Supervisor testified that Appellant's grandchildren had recently visited for a few days and that Appellant had been able to care for them all by herself. Therefore, Appellant did not qualify under Door 7.

The Appellant testified that she was very "up" when the Waiver Agency representatives visited on [REDACTED] because her grandchildren had just visited and she had not seen them in a very long time. Appellant indicated, however, that the grandchildren were supposed to stay for one week, but she had to send them home after two days because she could not handle them, and that she was in bed for three days after that recovering. Appellant indicated that she cannot prepare her own meals and her care worker used to prepare all of her meals. Appellant testified that she has an eight pound weight restriction so she cannot do any cleaning or vacuuming around the house. Appellant also indicated that she has a very long driveway and that there is no way she could ever shovel the driveway by herself. Appellant expressed a concern that she would be snowed in during the upcoming winter. Appellant testified that she does have two sons who live close by, and that they can provide support if needed.

The Waiver Agency Contract Manager testified that Appellant was given contact information for the Department of Human Services (DHS) to obtain home help through that department. The Waiver Agency Contract Manager also indicated that Appellant could receive assistance through the Department of Community Health and her local church.

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 the time the assessment was completed. It is possible that Appellant was just having a good day when the Waiver Agency completed the LOC determination on [REDACTED] and that Appellant may actually be eligible for services. If that is the case, Appellant can request another assessment at any time. However, the Waiver Agency, and the undersigned, must base its decision on the information that was available at the time of the LOC determination. Accordingly, the waiver agency properly determined that the Appellant was not eligible for MI Choice Waiver services.

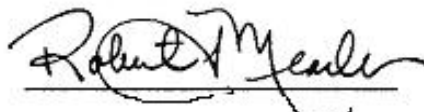
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DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



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

cc:



Date Mailed: 10/11/2012

***** NOTICE *****

The Michigan Administrative Hearing System for the Department of Community Health 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 for the Department of Community Health 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.