

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) 373-4147

IN THE MATTER OF:

██████████

Appellant

Docket No. 2013-23145 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 testify.

██████████, Case Manager, Long Term Care Services, represented the Department's waiver agency, the Detroit Area Agency on Aging. (Waiver Agency or AAA). ██████████, Care Manager, RN, appeared as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly terminate Appellant's MI Choice waiver services?

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 Department contracts with the Detroit AAA to provide MI Choice Waiver services to eligible beneficiaries.
2. Detroit AAA must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. The Appellant is a ██████ year-old Medicaid beneficiary who has been a participant in the MI Choice Waiver Program since ██████████. Appellant's diagnosis include diabetes, hypertension, high cholesterol, diabetic retinopathy, diabetic neuropathy, stage 3 kidney disease, and chronic shortness of breath. Appellant's vision is also very poor. (Testimony).

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4. Appellant was initially eligible for the MI Choice Waiver Program through Door 2 because she had a memory problem, she was moderately impaired in her daily decision making and she could usually make herself understood. Appellant remained eligible through Door 2 at a reassessment in [REDACTED] (Exhibits A, C, and D).
5. When Appellant was reassessed for the MI Choice Waiver Program on [REDACTED], Appellant was determined to be eligible under Door 7 because she had been a participant in the program for more than one year and needed ongoing services to maintain her current functional status. (Exhibits E and F).
6. At Appellant's reassessment for the MI Choice Waiver Program on [REDACTED], it was determined that Appellant did not meet the Nursing Facility Level of Care (NFLOC) criteria for either Door 1 or Door 2. Appellant was noted to be independent with all Door 1 criteria and she reported no cognitive or memory problems under Door 2. Appellant did still meet the criteria for Door 7, but the Waiver Agency determined that Appellant could no longer meet NFLOC criteria through Door 7 because Door 7 is supposed to be used only for temporary access to the program and because the services Appellant needs, housekeeping, can be met through other community resources. (Exhibits G, H and I; Testimony).
7. On [REDACTED], the Waiver Agency mailed Appellant an Advanced Action Notice indicating that Appellant's case would be closed because she no longer met NFLOC criteria. (Exhibit K).
8. On [REDACTED] the Michigan Administrative Hearing System received a request for hearing from the Appellant. (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 Area Agency on Aging, function as the Department's administrative agency.

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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 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 [REDACTED], 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 [REDACTED], 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 [REDACTED].

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

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- 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 reported no limitations with activities of daily living. As such, the Appellant does not qualify under 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."

Appellant reported no memory problem, her cognitive skills for daily decision making were modified independent, and she was able to make herself understood. As such, the 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's visit or physician's 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.

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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

No evidence was presented indicating that the Appellant had 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.

No evidence was presented indicating that the Appellant has ever received speech, physical, or occupational therapy. 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.

No evidence was presented indicating that the Appellant had any 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 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, or informal services are available to meet the applicant's needs. Here, Appellant has been a participant in the program for more than one year and does require ongoing services to maintain her current functional status, however, the services that Appellant needs, housekeeping, are available through other community or informal services.

Based on the information at the time of the NFLOC 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 is not eligible to receive ongoing services through the MI Choice Waiver. Accordingly, the Waiver Agency properly determined that the Appellant was not eligible for MI Choice Waiver services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice Waiver agency properly administratively closed Appellant's case due to multiple violations of MI Choice Participant Responsibilities.

IT IS THEREFORE ORDERED that:

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

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

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cc:



Date Mailed: March 1, 2013

***** 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.