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:

[redacted]

Docket No. 2013-29659 EDW
Case No. [redacted]

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 [redacted]. Appellant appeared and testified on her own behalf. [redacted] appeared as a witness for Appellant. [redacted], Waiver Director, appeared on behalf of [redacted], Region [redacted] Area Agency on Aging, the Department's MI Choice Program Waiver Agency (AAA or Waiver Agency). [redacted], Supports Coordinator, and [redacted], Social Worker, Supports Coordinator, appeared as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly determine that the Appellant was not eligible for the MI Choice Waiver program following eligibility assessment?

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 [redacted] year old female, born [redacted]. (Exhibit 1)

2. The Appellant is diagnosed with lupus, vascular necrosis of the hips, degenerative disc disease of lumbar spine, and arthritis. Appellant has had one hip replacement and needs the other hip replaced. Appellant also has had surgery on both of her wrists so it is difficult for her to lift or pick things up. (Exhibit 1; Testimony)

3. The Appellant lives alone and has no family or informal supports. (Exhibit 1; Testimony)

4. Appellant has difficulty dressing, cooking, cleaning and bathing. Appellant

does not take a bath because she is afraid she would not be able to get out of the tub. (Exhibit 1; Testimony)

5. On [redacted], the Waiver Agency assessed Appellant in her home for participation in the MI Choice Waiver Program. [redacted], Supports Coordinator and [redacted], Social Worker, conducted the assessment. Following the eligibility assessment, Appellant was notified via Adequate Action Notice that she did not meet the eligibility criteria for participation in the MI Choice Waiver program. (Exhibit A; Testimony)

6. 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 Region 14 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 <u>when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR</u> 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 reported that she is independent with bed mobility, transferring, toilet use and eating. As such, Appellant did 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 short term memory problems, she is independent with cognitive skills for daily decision making and she is usually able to make herself understood, although she sometimes has difficulty finding the right words to complete her thoughts. As such, 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 and no physician change order within the 14-day period leading up to the LOC Determination. As such, 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

Appellant was not receiving any of the treatments, nor did she have any of the conditions listed in Door 4 at the time of the assessment. Accordingly, 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.

At the time of the assessment, Appellant had not received any skilled rehabilitation therapies in the prior 7 days. Accordingly, 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.

Appellant denied any hallucinations, delusions, or challenging behaviors at the assessment during the prior seven days. Accordingly, 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 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, or informal services are available to meet the applicant's needs.

Appellant had been a participant in the MI Choice Waiver Program in the past, but her case was closed due to financial ineligibility for Medicaid in [redacted]. As such, at the time of this assessment, Appellant had not been a participant in the Waiver Program for at least one year, so she did not qualify under Door 7.

Appellant submitted medical documentation that supported her diagnosis, but nothing that countered the answers she had given at the time of the assessment. (Exhibit 2) In fact, Appellant admitted during the hearing that her answers to questions during the assessment were accurate. Appellant indicated, however, that her condition is sometimes worse than it was at the time of the assessment and that she has not been attending doctor appointments or skilled therapies because she cannot afford to.

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 is not eligible to receive ongoing services through the MI Choice Waiver Program. 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, finds that 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 K. Haveman, Director
Michigan Department of Community Health

[redacted]
Docket No. 2013-29659 EDW
Decision and Order

cc: [redacted]

Date Mailed: 4/16/2013

***** 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.