

**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. 2013-27424 EDW
Case No. ██████████

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, an in-person hearing was held on ██████████. ██████████, Appellant's brother / guardian, appeared and testified on Appellant's behalf. ██████████, Appellant's sister; ██████████, CMH Supports Coordinator; and ██████████, Nurse Care Manager, appeared as witnesses for Appellant. ██████████, Waiver Director, appeared on behalf of ██████████, ██████████, the Department's MI Choice Program Waiver Agency (██████████ or Waiver Agency). ██████████, R.N., Supports Coordinator, and ██████████, 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 ██████ year old female, born ██████████. (Exhibit 1)
2. The Appellant is diagnosed with Down's syndrome, diabetes, anxiety disorder, depressive disorder, hypertension, obesity, hyperlipidemia and mild mental retardation. Appellant has a GAF of 60. (Exhibit 1, pp 7-8; Testimony)
3. The Appellant lives in an AFC Home (██████████). Appellant's informal supports consist of her family. (Exhibit 1; p 1; Testimony)

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4. Appellant has limited cognitive abilities and limited quantitative reasoning skills. Appellant recently had a guardian appointed to look after her financial, medical, and housing decisions. (Exhibit 1; Testimony)
5. On ██████████, the Waiver Agency assessed Appellant for participation in the MI Choice Waiver Program. ██████████, R.N., Supports Coordinator and ██████████, 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 ██████████. (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 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))

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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

Appellant reported that she was 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.

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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."

At the assessment, Appellant's short term memory was intact and she was alert and oriented times 4. Appellant scored a 24/30 on the mini-mental state exam (MMSE). Appellant was able to appropriately recall past events and Appellant's guardian reported that she was of sound mind. Appellant does make poor decisions related to her eating habits, which has resulted in uncontrolled blood sugars. Appellant reported that she eats at fast food restaurants daily for most of her meals. Appellant is aware that this is not a healthy choice but continues to make this decision anyway. While Appellant does demonstrate poor decision making skills, her short term memory is intact and she is able to make herself understood. 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.

Appellant reported no physician visits and no 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

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- 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. Appellant was hospitalized from [REDACTED] through [REDACTED] for uncontrolled blood sugars and pneumonia, but Appellant was not on insulin at the time of the assessment and did not have any associated IADL/ADL needs related to pneumonia. 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 seven 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.

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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 was admitted to a skilled nursing facility on [REDACTED] and 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's brother/guardian testified that Appellant is non-compliant with her medications, which resulted in her recent hospitalization. Appellant's brother/guardian indicated that Appellant refuses to take insulin on her own because she thinks that makes her a "bad" diabetic. Appellant's brother/guardian testified that Appellant had breast cancer about four years ago and had a double mastectomy. Appellant's brother/guardian testified that Appellant cannot put the socks or leg wraps on that she is required to wear for her diabetes. Appellant's brother/guardian testified that Appellant has never lived on her own because her mother always lived close by and looked in on her. Since their mother has been placed in an assisted living facility during the past year, Appellant's condition has deteriorated as she has been more on her own. Appellant's brother/guardian testified that he thinks Appellant has a little bit of dementia, that she has OCD, and that she is a hoarder. Appellant's brother/guardian testified that the family would like to get Appellant into an assisted living facility in [REDACTED] and that they would need the assistance of the MI Choice Waiver Program to make that happen.

Appellant's sister testified that Appellant has Down's syndrome, but because she is higher functioning, sometimes people meeting her for the first time do not realize she has any disability. Appellant's sister testified that Appellant operates at a full scale IQ of only 60. Appellant's sister testified that when Appellant was admitted to the hospital for high blood sugar in [REDACTED], the hospital staff were surprised she did not have a stroke. Appellant's sister testified that Appellant's blood sugar is now normal as the AFC home staff makes sure Appellant eats well and gets her insulin shots. Appellant's sister testified that Appellant cannot live on her own and has no life skills. Appellant's sister testified that while CMH can provide Appellant mental health services, she really needs assisted living.

The CMH Supports Coordinator testified that CMH evaluated Appellant when Appellant no longer qualified to be in the nursing home. The CMH Supports Coordinator testified that CMH determined that Appellant needed to be placed in a specialized residential home, so she was placed at Pine Ridge. The CMH Supports Coordinator testified that Appellant is not doing very well at Pine Ridge because of all of the restrictions there. The CMH Supports Coordinator testified that Appellant needs total assistance with eating, because of her diet and the fact that she will not eat properly on her own. The CMH Supports Coordinator testified that Appellant needs physical help with transferring and moving around at night, and verbal prompts regarding her eating and dressing. The CMH Supports Coordinator also testified that Appellant has exhibited self harming behaviors.

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Appellant's Nurse Care Manager testified that Appellant can ambulate on her own with a wheeled walker and that she can complete toileting on her own, but does not clean herself properly afterwards, resulting in frequent urinary tract infections. Appellant's Nurse Care Manager testified that Appellant can feed herself, but again, needs assistance with picking the proper foods to eat because of her health conditions. Appellant's Nurse Care Manager testified that Appellant is doing much better since entering the AFC Home. Appellant's Nurse Care Manager testified that Appellant cannot independently handle her medication regimen and refuses to administer her own insulin shots. Appellant's Nurse Care Manager testified that Appellant will independently take herself off her medications, sometimes based on things she hears on television. Appellant's Nurse Care Manager testified that staff often finds Appellant's medications loose in her purse. Appellant's Nurse Care Manager testified that Appellant attempts to bathe on her own, but does not do a good job. Appellant's Nurse Care Manager testified that Appellant can mostly dress herself, but cannot put on her leg wraps and often shows up with only one sock. Regarding her cognitive abilities, Appellant's Nurse Care Manager testified that Appellant's short term memory is okay but that she does not process information correctly and often gets confused and disoriented. Appellant's Nurse Care Manager testified that Appellant can use public transportation, but only because in the county the public transportation Appellant is taking only requires her to know the phone number of the van service and the place she wants to go. Appellant's Nurse Care Manager testified that Appellant has had numerous physician visits recently. Appellant's Nurse Care Manager testified that Appellant often becomes distraught during office visits and it takes many hours to calm her down. Appellant's Nurse Care Manager testified that the AFC home has to dismantle the phone at night; otherwise Appellant will call 911 because she wants to go back to the hospital or nursing home.

The Waiver Agency's Director testified that Appellant was not exhibiting the behaviors mentioned above at the time of the assessment and, as such, the determination made at the time of the last assessment was correct according to Appellant's needs at that time. The Waiver Agency's Director indicated that while Appellant can be re-evaluated for the MI Choice Waiver Program, she would likely end up on the waiting list, because she is no longer transferring into the Program from a nursing home. The Waiver Agency's Director indicated that the wait list is currently 10-12 months and that Appellant would also need an age exception for placement in an assisted living facility given that she is only [REDACTED] years old.

Based on the information at the time of the LOCD, 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 services through the MI Choice Waiver Program at that time. While it appears that Appellant's condition may be different today, the Waiver Agency properly determined that the Appellant was not eligible for MI Choice Waiver services at the time of the LOCD. The Waiver Agency can necessarily only base its decision on the information it had when the decision was made. Appellant is always free to request another evaluation.

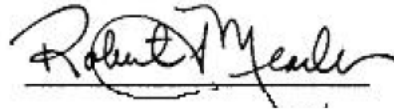
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The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Waiver Agency properly determined that the Appellant was not eligible for MI Choice Waiver services.

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

cc:



Date Mailed: 4/26/2013

***** 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.