

**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:

████████████████████

Appellant

Docket No. 2013-10700 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 ██████████ and durable power of attorney, appeared and testified on Appellant's behalf. ██████████, Care Management Director, Region IIIB Area Agency on Aging, represented the Department's Waiver Agency. (Waiver Agency or AAA). ██████████, RN, Supports Coordinator; ██████████, Transition Coordinator; and ██████████, Clinical Support Manager, 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?

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 Appellant is a ██████ year-old woman, born ██████████. (Testimony). Appellant's diagnoses include macular degeneration and degenerative joint disease. Appellant was certified as legally blind on ██████████ by ██████████. (Testimony; Exhibit 1).
2. The Appellant lives in an assisted living facility. (Testimony).
3. The Appellant has never been enrolled in the MI Choice Waiver program. (Exhibit A; Testimony).
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.

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5. Effective [REDACTED], all MI Choice Waiver applicants are required to be assessed using the MDCH approved Level of Care Assessment Tool.
6. On [REDACTED], Waiver Agency staff completed an in-person MDCH Level of Care Determination with Appellant. (Exhibit A, pp 1; 12-19).
7. Waiver Agency staff determined that the Appellant was ineligible for the MI Choice Waiver program because the Level of Care Assessment Tool indicated that she did not need a Nursing Facility Level of Care. (Exhibit A, p 1; Testimony).
8. On [REDACTED], the Waiver Agency provided Appellant an Advance Action Notice indicating that she was not eligible for the MI Choice Waiver program. The Notice included Appellant's rights to a fair hearing. (Exhibit A, p 1).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Appellant's request for an administrative hearing. (Exhibit 3).

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.

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. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

The Medicaid Provider Manual, Nursing Facilities Coverages Section, [REDACTED], 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 an online Michigan Medicaid Nursing Facility Level of Care Determination Tool. The LOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after [REDACTED]. A written form of the LOC, 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*

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Facility Eligibility Level of Care Determination Field Definition Guidelines, Pages 1-19,

The Waiver Agency provided evidence that on [REDACTED], Waiver Agency intake staff completed an in-home Michigan Medicaid Nursing Facility Level of Care Determination to determine if the Appellant met criteria for the MI Choice waiver program. Waiver Agency staff determined that the Appellant was ineligible for the MI Choice waiver program because the Level of Care Assessment Tool indicated that she did not need a Nursing Facility Level of Care and she could receive services from DHS HHS if needed. (Exhibit A, pp 4-10).

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 Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door. The Waiver Agency presented evidence that based on the Appellant's answers during the in-person assessment, and their observations, Appellant did not meet any of the criteria for Doors 1 through 7.

Door 1: Activities of Daily Living (ADLs)

LOC page 3 of 9 provides that the applicant must score at least six points to qualify under Door 1.

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 found to be independent with bed mobility, transfers, 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's short-term memory was found to be okay, she was independent in cognitive skills related to decision-making, and she was able to make herself clearly understood. As such, Appellant did not qualify under Door 2.

Door 3: Physician Involvement

The LOC indicates that to qualify under Door 3 the applicant must

...[M]eet either of the following to qualify under

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.

Appellant had no physician visits or physician orders within 14 days of the assessment. As such, Appellant did not qualify under Door 3.

Door 4: Treatments and Conditions

LOC page 5 indicates that 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

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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

LOC page 6 provides that the applicant must:

...[H]ave 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 had received speech, physical, or occupational therapy in the 7 days leading up to the assessment. Accordingly, the Appellant did not qualify under Door 5.

Door 6: Behavior

An applicant must exhibit any of the following behavior symptoms during the 7 days before the assessment: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, Resists Care. An applicant must exhibit any of the following Problem Conditions during the 7 days before the assessment: Delusions and Hallucinations. LOC page 8 provides that to qualify under Door if the applicant must score under the following two options:

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 did not report any of the listed behaviors within 7 days leading up to the assessment. Accordingly, the Appellant did not qualify under Door 6.

Door 7: Service Dependency

An applicant could qualify under Door 7 if there was evidence that she or he is currently being served in a nursing facility (for at least one year) or by the MI Choice or PACE program, and required ongoing services to maintain her current functional status.

Here, Appellant was a new applicant to the MI Choice Waiver program so she had not been receiving services for at least one year and, as such, could not require ongoing services to maintain her current functional status.

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Appellant's ██████ testified that his ██████ is legally blind, which automatically qualifies her for Medicaid in Michigan and, as such, should qualify her for the MI Choice Waiver program. Appellant's ██████ indicated that the LOCD should include blindness as a criteria because obviously a blind person is going to need some assistance with his or her care. Appellant's ██████ testified that his ██████ can no longer button buttons or use zippers because of her degenerative joint disease and that she cannot get out of a standard sized bed without assistance. Appellant's ██████ indicated that his ██████ also now needs to use a handicapped toilet.

The Wavier Agency's Transition Coordinator testified that the MI Choice Waiver Program's LOCD is linked to whether a person can complete specific activities of daily living; it is not linked to a specific diagnosis, like blindness. The Wavier Agency's Transition Coordinator also testified that use of the LOCD is mandated by the State.

Weighing the evidence in this case the Waiver Agency provided a preponderance of evidence to show that the Appellant was not eligible for the MI Choice Waiver program. The Appellant did not prove by a preponderance of evidence that she requires a Nursing Facility Level of Care. The Appellant does not meet the requirements for any Door 1 through 7 on the Medicaid Nursing Facility Level of Care Determination Tool. While Appellant now may need some assistance with activities of daily living, she did not report the need for such assistance at the time of the assessment. This Administrative Law Judge must base his decision on the facts that the Waiver Agency had on hand at the time of the LOC determination. Based on that information, Appellant is not eligible for MI Choice program eligibility. If Appellant's condition worsens, she can always request another assessment.

DECISION AND ORDER

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

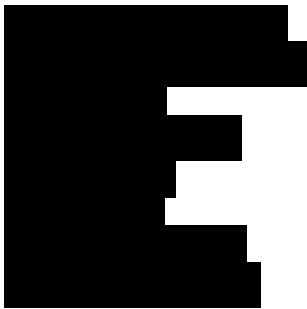
IT IS THEREFORE ORDERED that:

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: February 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.