

**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:

Docket No. 2014-24701 EDW
Case No. [REDACTED]

[REDACTED]

Appellant

_____ /

DECISION AND ORDER

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

After due notice, a telephone hearing was held on [REDACTED]. Appellant appeared and testified.

[REDACTED], Manager of the [REDACTED], (Agency) subcontractor with Michigan Department of Community Health appeared after the hearing commenced. [REDACTED] and [REDACTED] appeared on witnesses

ISSUE

Did the Waiver Agency properly determine that Appellant was no longer eligible for the MI Choice Waiver program on the grounds that he did not meet Door 1 or 2 and only met criteria for one of the Agency's recently designated "temporary doors"?

FINDINGS OF FACT

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

1. Appellant is an [REDACTED] year old [REDACTED], whose date of birth is [REDACTED]. Appellant is a recipient of MA-Extended Care.
2. At all relevant times prior to the action herein, Appellant was a recipient of the Waiver Medicaid program with the federal government, for which the [REDACTED] [REDACTED] has obtained approval, administered by the [REDACTED] Department of Community Health (DCH). DCH subcontracts with various agencies in the State of Michigan to administer the program. In this case, the subcontracting agency is Respondent, [REDACTED], [REDACTED] (Agency).

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3. The Agency has a contract with DCH whereby it is obligated to comply with the NFLOC tool in determining initial and ongoing eligibility. Federal and state law allows eligibility if an individual meets criteria in any one of the Doors 1 – 7.
4. On or about [REDACTED], new management at the Agency changed the NFLOC tool by making a new internal rule stating that individuals are no longer eligible and will not qualify for Waiver eligibility unless that individual meets Door 1 or 2, newly called “permanent doors”. Doors 3-7 were no longer considered eligible doors, and designated as “temporary doors”. The Agency management directed that an individual would only be eligible for the MI Choice Waiver program if Doors 1 or 2 were met. (Testimony)
5. No federal, state, or DCH laws, statutes, rules, or waivers were identified as having given the Detroit Agency any authority to modify the NFLOC tool.
6. Appellant was not previously eligible under Doors 1 or 2. Appellant was and continues to be eligible under Door 4.
7. [REDACTED] the Agency did a re-assessment and determined that Appellant was no longer eligible under Door 4.
8. On [REDACTED] the Agency issued a “Warning Closure Letter” informing Appellant that her Waiver case will be closed for the following reason: “You are medically stable and/or have no unmet needs in home assessment of Appellant regarding her request for waiver nursing level waiver services. Door 4”.
9. On [REDACTED] Appellant filed a hearing request
10. On [REDACTED] the Agency issued an Advanced Action Notice informing Appellant that effective [REDACTED] the following services will be suspended: “Service Coordination, CLS, PERS, and liquid nutrition”.

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

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Choice in Michigan. The program is funded through the federal Centers for Medicaid and Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case, A&D Home Health Care, Inc., 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))

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented issued 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 5.1.D. of the Medicaid Provider Manual Nursing Facility Coverages 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*, or LOC or NFLOC). 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 Medicaid Provider Manual on the MI Choice Waiver Chapter also discusses the Level of Care Determination (LOCD) in Section 2.2-Functional Eligibility.

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. Medicaid Provider Manual, Michigan Department of Community Health, MI Choice Waiver Chapter, p 2; Version April 1, 2014.

The Doors are as follows:

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

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."

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.

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

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.

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.

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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In this case, the Agency testimony was that Appellant was previously eligible under Door 4, and, continues to meet the criteria under Door 4. The Agency further testified that new management of the Agency came in [REDACTED] and changed the criteria for eligibility. The new criteria designated Doors 1 & 2 as “permanent”, and Doors 3-7 as “temporary.” Pursuant to testimony at the hearing, the new guidelines issued by management stated that MI Choice Waiver eligibility only exists if an individual meets Doors 1 or 2. Temporary doors would no longer allow an individual to be eligible for MI Choice Waiver services, and, those previously approved under Doors 3-7 would have their cases closed.

When asked for the authority-the law, policy or rules that gave the Agency the authority to change the NFLOC tool, the Agency witnesses testified that it was verbal (oral) communications, directives verbally given at staff meetings, and e-mails. The Agency was not granted authority at the administrative hearing to submit any new documents after the hearing; however, the agency faxed to the undersigned ALJ “power point” screens and an Detroit Area on Ageing internal communication verifying the Detroit Agency changes. No evidence was submitted to show that Appellant was copied. These internal documents corroborate the witnesses testimony but must be classified as ex-parte communication.

Eligibility for the MI Choice Waiver program under federal law, state law, federal regulations, the Medicaid Provider Manual, allow for MI Choice Waiver program eligibility if an individual meets any one of the 7 Doors. (See above) Unrefuted evidence on the record is that Appellant meets Door 4. Thus, the Agency action must be reversed.

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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Waiver Agency failed to establish that it properly determined that the Appellant was no longer eligible for MI Choice Waiver services.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

It is ORDERED that the Agency shall immediately reinstate Appellant's case, and issue any and all benefits to Appellant to which she lost due to the case closure, would have received had her case not closed. IT IS SO ORDERED.

/s/ _____

Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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***** 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.