

**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. 2014-32402 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. Appellant was represented by [REDACTED].

[REDACTED], RN, Clinical Manager appeared on behalf of [REDACTED]-B, (Waiver Agency, [REDACTED], or Agency) subcontractor with Michigan Department of Community Health represented the Department's MI Choice Program Waiver program.

ISSUE

Did the Waiver Agency properly determine that Appellant was not eligible for the MI Choice Waiver program following an 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. Appellant is a [REDACTED] year old female born [REDACTED].
2. At all relevant times, Appellant has been an MA-G2S beneficiary. Appellant has a spend-down.
3. On [REDACTED] the Agency did an in home assessment of Appellant regarding her request for waiver nursing level waiver services. The individual who conducted the assessment was not at the administrative hearing. The individual who presented the Agency's case did not have any personal knowledge of Appellant's case.

██████████
Docket No. 2013-32402 EDW
Decision and Order

4. On ██████████ the Agency issued an Adequate Action Notice informing Appellant that she did not qualify for nursing facility level services (NFLOC) based on the Michigan Medicaid Nursing Facility Level of Care Determination. (Exhibit A.3) The Agency further testified at the administrative hearing that Appellant would not have eligibility due to not meeting her spend-down.
5. On ██████████ Appellant filed a hearing request. Appellant has a Hearing Representative identified on the Hearing Request. The Agency failed to serve the Representative with an evidentiary packet.
6. The Agency's evidentiary packet did not contain evidence of the NFLOC assessment tool.

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 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))

Docket No. 2013-32402 EDW
Decision and Order

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 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. The Waiver Agency presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7.

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.

Docket No. 2013-32402 EDW
Decision and Order

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.

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.

In this case, the Agency indicated that the NFLOC was completed; however, no evidence was presented to show that the NFLOC was completed or what the findings were. The Agency did present evidence of an “IHC”. The Agency testified that this tool is used to assess whether to refer a case for an exception when the NFLOC show no eligibility.

At an administrative hearing, the Agency generally has the burden of going forward by presenting evidence of the action taken, and, the authority relied on in taking the action. The Agency must establish by a preponderance of evidence that the action is supported by the facts, and that the authority relied upon gives the Agency the authority to take the action in dispute. This is the purview of an Administrative Law Judge (ALJ).

After a careful review of the credible and substantial evidence of record, this ALJ finds that the Agency failed to meet its burden of proof. As noted, the Agency must, at an administrative hearing, present sufficient evidence of the action taken, and, present the proper authority in support of its action. Here, the Agency denied due to Appellant “not meeting the NFLOC” but failed to present the NFLOC. As such, the denial must be reversed.

Docket No. 2013-32402 EDW
Decision and Order

It is noted that Appellant's representative was not served with a copy of the hearing summary or any of the purported documents to prepare for the administrative hearing. Nor was the any individual who had personal knowledge of this case present at the administrative hearing for testimony and/or cross-examination. Further, the Agency argued in the alternative that Appellant had no eligibility as she failed to meet her spend-down but failed to present any authority that would support the alternative denial reasoning.

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 not eligible for MI Choice Waiver services.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

It is ORDERED that the Agency shall initiate a new assessment. It is further ORDERED that the new assessment shall relate back in time to the initial referral date of [REDACTED]. IT IS SO ORDERED.

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

[REDACTED]
cc:

[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

Docket No. 2013-32402 EDW
Decision and Order

***** 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.