STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted]

Docket No. 15-020402 EDW
Case No. [redacted]

Appellant
_____/

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 Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant appeared on her own behalf.

[redacted], Social Work Manager, represented the Department's Waiver Agency, Detroit Area Agency on Aging. (Waiver Agency or AAA). [redacted], Supports Coordinator, appeared as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly determine that 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. Appellant is a [redacted] year old Medicaid beneficiary, born [redacted], who applied for services through the MI Choice Waiver Program. (Exhibit A, p 6; Testimony).

2. The Waiver Agency is a contract agent of the Michigan Department of Health and Human Services (MDHHS) and is responsible for waiver eligibility determinations and the provision of MI Choice Waiver Services.

3. On [redacted] an enrollment assessment of Appellant was done by the Waiver Agency to determine her eligibility for the MI Choice Waiver Program. (Exhibit A, pp 4-13; Testimony).

4. On [redacted] the Waiver Agency provided Appellant an Adequate Action Notice informing Appellant that it determined she was not eligible for the MI Choice Waiver Program. (Exhibit A, p 14; Testimony).

5. On [redacted] the Michigan Administrative Hearing System received Appellant's request for an administrative hearing. (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 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 Medicaid (formerly HCFA) to the Michigan Department of Health and Human Services (Department). Regional agencies 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)*

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as "medical assistance" under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. *42 CFR 430.25(c)(2)*

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, October 1, 2015, which provides in part:

> **SECTION 1 – GENERAL INFORMATION**
>
> MI Choice is a waiver program operated by the Michigan Department of Community Health (MDCH) to deliver home and community-based services to elderly persons and persons with physical disabilities who meet the Michigan nursing facility level of care criteria that supports required long-term care (as opposed to rehabilitative or limited term stay) provided in a nursing facility. The waiver is approved by the Centers for Medicare and Medicaid Service (CMS) under section 1915(c) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as organized health care delivery systems (OHCDS). These entities are commonly referred to as waiver agencies. MDCH and its waiver agencies must abide by the terms and conditions set forth in the waiver.
>
> MI Choice services are available to qualified participants throughout the state and all provisions of the program are available to each qualified participant unless otherwise noted in this policy and approved by CMS. (p. 1).
>
> * * *
>
> **SECTION 2 - ELIGIBILITY**
>
> The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:
>
> - An applicant must establish his/her financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
>
> - The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
>
> - It must be established that the applicant needs at least one waiver service and that the service needs of the applicant cannot be fully met by existing State Plan or other services.
>
> All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program. (p.1, emphasis added).

* * *

2.2.A. MICHIGAN MEDICAID NURSING FACILITY LEVEL OF CARE DETERMINATION

MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination. The LOCD is available online through Michigan's Single Sign-on System. Refer to the Directory Appendix for website information. Applicants must qualify for functional eligibility through one of seven doors.

These doors are:

- Door 1: Activities of Daily Living Dependency
- Door 2: Cognitive Performance
- Door 3: Physician Involvement
- Door 4: Treatments and Conditions
- Door 5: Skilled Rehabilitation Therapies
- Door 6: Behavioral Challenges
- Door 7: Service Dependency

The LOCD must be completed in person by a health care professional (physician, registered nurse (RN), licensed practical nurse (LPN), licensed social worker (BSW or MSW), or a physician assistant) or be completed by staff that have direct oversight by a health care professional.

The online version of the LOCD must be completed within fourteen (14) calendar days after the date of enrollment in MI Choice for the following:

- All new Medicaid-eligible enrollees
- Non-emergency transfers of Medicaid-eligible participants from their current MI Choice waiver agency to another MI Choice waiver agency
- Non-emergency transfers of Medicaid-eligible residents from a nursing facility that is undergoing a voluntary program closure and who are enrolling in MI Choice

> Annual online LOCDs are not required; however, subsequent redeterminations, progress notes, or participant monitoring notes must demonstrate that the participant continues to meet the level of care criteria on a continuing basis. If waiver agency staff determines that the participant no longer meets the functional level of care criteria for participation (e.g., demonstrates a significant change in condition), another face-to-face online version of the LOCD must be conducted reflecting the change in functional status. This subsequent redetermination must be noted in the case record and signed by the individual conducting the determination. (pp. 1-2).

In order to be found eligible for MI Choice Waiver services, Appellant must meet the requirements of at least one Door. The Waiver Agency presented testimony and documentary evidence that 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 was found to be independent with bed mobility, transfers, toilet use and eating. Appellant indicated that she was currently using the couch for her bed and did not require any assistance to reposition on the couch. Appellant was observed getting up from her chair multiple times during the assessment and moving around the apartment with her walker without assistance. Appellant did not appear to be out of breath or in distress while mobile. Appellant did not rock or appear to strain to get off of the couch. 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 memory problems and indicated that she has no difficulty making decisions or making herself understood. Appellant remained engaged in the conversation throughout the assessment and was able to find and provide all relevant information. Appellant pays all of her bills without assistance, makes her own appointments and manages her own medications. Appellant also arranges for her own transportation when needed. 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 did not report physician visits or change orders to meet the criteria in Door 3. 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 reported none of the conditions or treatments associated with Door 4. Accordingly, Appellant did 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.

Appellant reported that she was in physical therapy, but only had one appointment remaining so she did not require continued treatment. 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 did not have any delusions or hallucinations within seven days of the LOC Determination. Appellant did not exhibit any of the challenging behaviors associated with Door 6 within the 7 days prior to the assessment. 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 Appellant could qualify under Door 7 if she 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.

Here, Appellant had not been a participant in the Waiver Program for at least one year. As such, Appellant did not qualify under Door 7.

Appellant testified that she does have to rock to get off of the couch and, while not incontinent, did tell the workers that she dribbles sometimes. Appellant indicated that the workers did not look in her bathroom. Appellant indicated that she cannot get into the tub/shower without assistance and that her granddaughter has to help her get into the tub/shower. Appellant indicated that she was able to continue on when she had no services because she had no choice. Appellant also indicated that she has a neighbor who also helps her when needed. Appellant indicated that she had been approved for the MI Choice Waiver Program under Door 1 in [redacted] and that nothing in her condition changed between [redacted] and [redacted] Appellant indicated that she requested the hearing because she wanted to know why she was denied. Appellant testified that she has since been approved for services through the PACE program.

In response, the Waiver Agency's Social Work Manager testified that Appellant was still enrolled in Chore/ILS services in [redacted], so even though she met eligibility criteria for the MI Choice Waiver Program at that time, the Waiver Agency could not enroll her.

Based on the information at the time of the NFLOC determination, Appellant did not meet the Medicaid nursing facility level of care criteria. This does not imply that Appellant does not need any assistance, or that she does not have any medical problems, only that she was not eligible to receive services through the MI Choice Waiver Program at the time of the assessment. Accordingly, the Waiver Agency properly determined that Appellant was not eligible for continued MI Choice Waiver services. At this point, the issue is somewhat moot given that Appellant has now been approved for the PACE program.

Appellant did not prove by a preponderance of evidence that the Waiver Agency erred in finding that she was not eligible for the MI Choice Waiver Program. Therefore, Appellant is not eligible for the MI Choice Waiver Program.

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 Appellant was not eligible for the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of
Health and Human Services

Date Mailed: [redacted]

cc: [redacted]

RJM/cg

***** 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.