

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2010-22497 EDW
2010-25133 EDW

████████████████████,

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, appeared on his own behalf.

██████████ Waiver Medical Supervisor, represented the Department's MI Choice waiver agency, ██████████). ██████████, social worker; and ██████████, Registered Nurse; appeared as witnesses on behalf of ██████████ care management.

ISSUE

Did the Department's Waiver Agency properly terminate Appellant from 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 Department contracts with the waiver agency to provide MI Choice waiver services to eligible beneficiaries.
2. The Appellant is a ██████████. The Appellant's diagnosis includes diabetes and a ██████████ hospitalization for infection. (Exhibit 1, pp 10-11).
3. On ██████████, the waiver agency conducted a reassessment of Appellant's MI Choice waiver services. (Exhibit 1 pages 6-11). During the reassessment the waiver agency care management team observed the Appellant being able to perform activities of daily living independently and

exhibiting intact decision-making skills. The waiver agency care management team was told by the Appellant that he needs to use a catheter to void, but he can use the catheter himself. The Appellant also stated he can drive, but does not have a car. (Exhibit 1, pages 6-11).

4. During the ██████████ reassessment the waiver agency care management team asked Appellant questions related to the nursing home seven-door, level of care determination tool. The Appellant answered the questions competently and indicated that while he had previously been hospitalized to receive intravenous (IV) antibiotics, he was no longer prescribed IV antibiotics. (Exhibit 1).
5. Based on their observations and on the information told by the Appellant, the waiver agency care management team determined the Appellant did not meet any of the seven-door level of care determination tool criteria and therefore did not meet the level of nursing home skilled care. (Exhibit 1).
6. On ██████████, the waiver agency sent an Advance Action Notice to the Appellant notifying him of a termination of MI Choice waiver services because he no longer qualified MI Choice waiver services. (Exhibit 1, page 4).
7. On ██████████, the State Office of Administrative Hearings and Rules received requests for hearing from the Appellant. (Exhibit 1, p 2; Exhibit 2).

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 was receiving 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 (CMS, formerly HCFA) to the Michigan Department of Community Health (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 to Section 1915 (c) of the Social Security Act (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)).

Home and community based services means services not otherwise furnished under the State’s Medicaid plan and that are furnished under a waiver. (42 CFR 440.180(a)).

The state of Michigan utilizes the seven-door level of care determination tool to assess whether an individual needs a nursing home level of care. The evidence in this case demonstrates that the Appellant no longer meets a nursing home level of care. The seven-door level of care determination tool, in pertinent part:

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

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

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.

Door 4
Treatments and Conditions

The LOC 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

Door 5
Skilled Rehabilitation Therapies

The LOC 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

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. The LOC 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.

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 (and for at least one year) or by the MI Choice or PACE program, and required ongoing services to maintain her current functional status.

The Waiver Agency witness ██████████ testified that a Waiver Agency intake specialist personally questioned the Appellant about the criteria for each of the seven doors but he did not meet the eligibility criteria for any of the seven doors.

During the hearing the MI Choice waiver agency witnesses testified that at the ██████████, reassessment they observed the Appellant being able to turn in bed, transfer, toilet, and eat independently, and exhibited intact decision-making skills. The waiver agency care management team was told by the Appellant that he is able to drive but does not have a car. Because the Appellant perform all of his activities of daily living he was not eligible for the waiver through door one. (Exhibit 1, pages 6-11).

During the ██████████, reassessment the waiver agency care management witnesses asked Appellant questions related to door two of the nursing home seven-door level of care determination tool. The waiver agency care management witnesses explained that Appellant had clear comprehension and expression as he answered all of their questions. Because the Appellant had none of the door two cognitive deficits, he was not eligible for the waiver through door two.

The waiver agency care management witnesses stated the Appellant had not displayed any of the challenging behaviors in door six. The waiver agency care management witnesses noted he knew how to test his blood sugar and administer his insulin. The waiver agency care management witness ██████████ testified that the Appellant no longer used IV antibiotics, he did not have any changes in doctor-ordered insulin, nor he did have any specialized therapies or medical treatments indicated in the level of care determination tool. Because he did not meet the criteria of doors 4-6, the waiver agency care management team found he was not eligible for the waiver program through any of those doors. (Exhibit 1, pages 7-8).

The waiver agency care management witnesses noted that the Appellant would be independent without the level of assistance of nursing home skilled care or the MI Choice waiver services; therefore he is not eligible through door seven.

Based on their observations and on the information told by the Appellant, the waiver agency care management team determined the Appellant did not meet any of the seven-door level of care determination tool criteria, he did not meet a nursing home level of care, and therefore the Appellant's MI Choice waiver services were terminated. (Exhibit 1, page 11).

The Appellant stated he wanted to remain on the MI Choice Waiver for the chore services. The Appellant explained his Medicaid spend-down is the same as his social security income and, therefore, he is not eligible for home help services through the Department of Human Services. The Appellant testified at the hearing that he uses insulin for diabetes. Witness ██████████ explained that use of insulin by itself did not qualify for MI Choice Waiver services, but if Appellant had more than two doctor-ordered insulin changes within 14 days of the reassessment he would be eligible, but he did not have the changes.

The Appellant testified that he had previously been hospitalized to receive intravenous antibiotics. The Appellant further testified that he needed IV antibiotics for a catheter-related infection and may have to deal in the future with antibiotic-resistant infections. Witness ██████████ explained that while Appellant was in the hospital and prescribed IV antibiotics for six days in ██████████, he presently was home and no longer prescribed IV antibiotics.

The Appellant bears the burden of proving, by a preponderance of evidence, that the waiver agency did not properly terminate his MI Choice waiver services. A preponderance of the material and credible evidence established that the MI Choice waiver agency acted in accordance to the law and the Department policy, and its actions were proper when it terminated the Appellant's MI Choice program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice waiver agency properly terminated Appellant's MI Choice waiver services.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5/17/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.