**STATE OF MICHIGAN**
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**
**FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

[redacted]

Appellant
_____/

**Docket No.** 2012-59062 EDW
**Case No.** [redacted]

## DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq*. and upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant appeared and testified on her own behalf. [redacted], Appellant's son, also testified on Appellant's behalf. [redacted] Program Manager, represented the Department of Community Health's Waiver Agency, the Macomb-Oakland Regional Center, Inc. ("Waiver Agency" or "MORC"). [redacted] registered nurse/supports coordinator, and [redacted], social worker/supports coordinator, also testified as witnesses for MORC.

## ISSUE

Did the Waiver Agency properly terminate Appellant's services through 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 an [redacted] year-old [redacted] who has been diagnosed with arthritis, coronary heart disease, hypertension, diabetes, and vertigo. (Exhibit 2, page 1; Exhibit 5, pages 9-10).

2. MORC 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.

3. Appellant had been enrolled in and receiving MI Choice waiver services through MORC, including personal care services and homemaker services. (Exhibit 1, page 1; Testimony of [redacted]).

4. On [redacted] MORC staff completed a new Level of Care Determination (LOCD) and reassessment of Appellant's needs and services. (Exhibit 2, pages 1-9; Exhibit 5, pages 1-17).

5. Based on Appellant's reports and their own observations during that reassessment, the Waiver Agency's staff found that Appellant did not qualify for the waiver program and her services should be terminated. (Testimony of [redacted]).

6. On [redacted] MORC sent Appellant a notice that it was terminating her personal care and homemaking services through the waiver program. The effective date of the termination was identified as [redacted]. (Exhibit 1, page 5).

7. The Waiver Agency subsequently reinstated Appellant in the program. However, it did not re-authorize personal care or homemaking services. Instead, the Waiver Agency only authorized case management services. (Testimony of [redacted] Testimony of [redacted]).

8. On [redacted] the Department received a Request for Hearing regarding the earlier termination of services in this case. (Exhibit 7).

9. On [redacted] MORC staff completed another reassessment of Appellant's needs and services. (Exhibit 6, pages 1-17).

10. During that reassessment, MORC determined that Appellant's case management services should also be terminated as Appellant was refusing to follow case management recommendations and did not appear to need the services. (Testimony of [redacted] Testimony of [redacted] .

## 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.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case MORC, 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).]

Types of services that may be offered include:

> Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:
>
> - Case management services.
> - Homemaker services.
> - Home health aide services.
> - Personal care services.
> - Adult day health services
> - Habilitation services.
> - Respite care services.
> - Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
>
> Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization. [42 CFR 440.180(b).]

In this case, MORC first terminated Appellant's personal case and homemaker services. Later, it also terminated her case management services. Appellant challenges both of those actions. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's actions should be sustained.

With respect to the waiver program, 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.

Here, MORC decided to deny Appellant's services after finding that she did not meet the medical criteria for the waiver program. With respect to functional eligibility for the waiver program, the Medicaid Provider Manual (MPM) provides:

> **2.2 FUNCTIONAL ELIGIBILITY**
>
> The MI Choice waiver agency must verify applicant appropriateness for services by completing the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) within 14 calendar days after the date of the participant's enrollment. (Refer to the Directory Appendix for website information.) The LOCD is discussed in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter. Additional information can be found in the Nursing Facility Coverages Chapter and is applicable to MI Choice applicants and participants.
>
> The applicant must also demonstrate a continuing need for and use of at least one covered MI Choice service. This need is originally established through the Initial Assessment using the process outlined in the Need For MI Choice Services subsection of this chapter.
>
> **2.2.A. MICHIGAN MEDICAI D 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 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.

Copies of the LOCD for participants must be retained by the waiver agency for a minimum period of six years. This information is also retained in the MDCH LOCD database for six years. [MPM, MI Choice Waiver Section, April 1, 2012, pages 1-2.]

Regarding Door 1, the LOCD tool states:

**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 [Exhibit 2, page 3.]

Regarding Door 2, the LOCD tool states:

**Door 2**
**Cognitive Performance**

**Scoring Door 2**: The applicant must score under one of the following three options to qualify under Door 2.

2. "Severely Impaired" in Decision Making.

3. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."

4. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood." [Exhibit 2, page 4.]

Regarding Door 3, the LOCD tool states:

**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 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. [Exhibit 2, page 5.]

Regarding Door 4, the LOCD tool states:

**Door 4**
**Treatments and Conditions**

**Scoring Door 4:** The applicant must score "yes" in at least one of the nine categories and have a continuing need to qualify under Door 4.

A. Stage 3-4 pressure sores
B. Intravenous or parenteral feedings
C. Intravenous medications
D. End-stage care
E. Daily tracheotomy 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 [Exhibit 2, page 5.]

Regarding Door 5, the LOCD tool states:

**Door 5**
**Skilled Rehabilitation Therapies**

**Scoring Door 5:** The applicant must have required at least 45 minutes of active [Speech Therapy], [Occupational Therapy] or [Physical Therapy] (scheduled or delivered) in the last 7 days and

> continues to require skilled rehabilitation therapies to qualify under Door 5 [Exhibit 2, page 6.]

Regarding Door 6, the LOCD tool states:

> **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. [Exhibit 2, page 7.]

Regarding Door 7, the LOCD tool states:

> **Door 7**
> **Service Dependency**
>
> **Scoring Door 7:** The applicant must be a current participant and demonstrate service dependency to qualify under Door 7. [Exhibit 2, page 7.]

Here, the Waiver Agency initially determined that Appellant did not pass through any of the 7 Doors and was therefore ineligible for the program.

Given Appellant's answers during the LOCD and her testimony during the hearing, it is clear that the Waiver Agency's decision should be sustained. Appellant only seeks limited assistance and none of that requested assistance relates to the tasks identified in Door 1. Similarly, while Appellant has medical problems, none of her conditions meet the criteria for passing through Doors 2, 4, or 6. Moreover, the medical treatment Appellant receives does not reach the levels required by Doors 3, 4, or 6.

With respect to Door 7, the Waiver Agency first noted that Appellant's needs could be met through her natural supports and other state programs, particularly the Adult Home Help program. Appellant was then referred to the Department of Human Services (DHS) so that she could apply for home help.

As discussed above, MORC subsequently found that Appellant could demonstrate a service dependency that would allow her to qualify under Door 7 because Appellant had

a need for case management services, which are not available in the home help program. Appellant was therefore reinstated in the waiver program and case management services were authorized.

As testified to by [redacted] and [redacted], the case management services took the form of trying to assist Appellant in getting a primary care physician, following up with her cardiologist, and getting Appellant a medication box. However, Appellant refused a medication box and did not follow up with her cardiologist or any primary care physician. The Waiver Agency then determined that, as Appellant was not utilizing the case management services, she did not need them and did not have a service dependency through Door 7. MORC therefore terminated her case management services as well.

In response, Appellant testified that, following the termination of case management services, she has picked a primary care physician and has seen her cardiologist. However, Appellant also testified that she never informed anyone at MORC of her visits. Appellant further testified that she does not need a medication box.

This Administrative Law Judge is limited to reviewing the Waiver Agency's decision in light of the information available at the time it made its decision. Here, at the time Appellant's personal care and homemaker services were terminated, MORC properly found that Appellant's needs in those areas did not qualify her for the waiver program and could be met through the home help program. Moreover, at the time Appellant's case management services were terminated, she was not using those services and they did not appear medically necessary. The fact that Appellant subsequently followed up on the recommendations of her case manager is irrelevant given that she only did so after the termination and/or never informed MORC that she was using the case management services.

## DECISION AND ORDER

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

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 9/18/2012

***** 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.