

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Smith, Jill Ann,

Appellant

Docket No. 2012-64521 EDW

Case No. 95687145

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 October 3, 2012. Appellant Jill Ann Smith appeared and testified on her own behalf.

Barbara A. Stoy, LBSW, Waiver Services Manager, Region II Area Agency on Aging, appeared and testified on behalf of the Department's Waiver Agency. Rhonda Edwards, RN, Appellant's Care Manager with Region II Area Agency on Aging also testified on behalf of the Waiver Agency.

ISSUE

Did the Department's Waiver Agency properly terminate Appellant's MI Choice Waiver services?

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 Appellant is a 52-year-old woman, DOB 1/15/1960, who was enrolled in the MI Choice Waiver Program. . (Exhibits 3, 6 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.
3. On June 19, 2012, Rhonda Edwards, RN, Appellant's Care Manager, Mary F. Bonilla, LBSW, Appellant's Social Work Supports Coordinator, and Dawn Benz, RN, the Deputy Quality Management Supervisor met with Appellant to do a Nursing Facility Level of Care Determination (LOCD) to determine Appellant's continued eligibility for the MI Choice

Waiver Program. Ms. Edwards found the Appellant did not meet the medical eligibility for the MI Choice waiver program. (Exhibits 1, 3, 4, 6 and testimony).

4. On July 6, 2012, the waiver agency sent an Advance Action Notice to the Appellant notifying her she was no longer medically eligible for the MI Choice Waiver services and of the termination of her Community Living Supports. (Exhibits 1, 3 and testimony).
5. On July 18, 2012, MAHS received the Appellant's request for an Administrative Hearing. (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)].

The policy regarding enrollment in the MI Choice Waiver program is contained in the *Medicaid Provider Manual, MI Choice Waiver*, July 1, 2012, 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).

* * *

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 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. (p. 1).

* * *

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).

2.3 NEED FOR MI CHOICE SERVICES

In addition to meeting financial and functional eligibility requirements and to be enrolled in the program, MI Choice applicants must demonstrate the need for a minimum of one covered service as determined through an in-person assessment and the person-centered planning process.

Note: Supports coordination is considered an administrative activity in MI Choice and does not constitute a qualifying requisite service. Similarly, informal support services do not fulfill the requirement for service need.

An applicant cannot be enrolled in MI Choice if their service and support needs can be fully met through the intervention of State Plan or other available services. State Plan and MI Choice services are not interchangeable. MI Choice services differ in nature and scope from similar State Plan services and often have more stringent provider qualifications.

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS

Reassessments are conducted by either a properly licensed registered nurse or a social worker, whichever is most appropriate to address the circumstances of the participant. A team approach that includes both disciplines is encouraged whenever feasible or necessary. Reassessments are done in person with the participant at the participant's home. (p. 4).

The Waiver Agency provided evidence that on June 19, 2012, Rhonda Edwards, RN, Care Manager Region II Area Agency on Aging, Mary F. Bonilla, LBSW, Appellant's

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Social Work Supports Coordinator, and Dawn Benz, RN, the Deputy Quality Management Supervisor met with Appellant to do a Nursing Facility Level of Care Determination (LOCD) to determine Appellant's continued eligibility for the MI Choice Waiver Program. Ms. Edwards stated they found the Appellant did not meet the medical eligibility for the MI Choice waiver program.

Ms. Edwards stated they went to Appellant's residence to do the reassessment and completed a Nursing Facility Level of Care Determination LOCD. Based on the LOCD that was completed during the reassessment Appellant did not appear to be medically eligible. Ms. Edwards was instructed to get records from Appellant's doctors to see whether they would support eligibility under Door 3. (Exhibits 1, 6, and testimony).

Ms. Edwards stated the medical records showed the Appellant was stable and there were insufficient doctor's visits or changes in orders to qualify Appellant through Door 3. Ms. Stoy stated the MI Choice Waiver Program is primarily for Individuals who are home bound, and in contrast, the Appellant was at a camp for the whole summer. This indicates the Appellant was no longer eligible for the waiver program at the time of the reassessment.

Appellant testified she believed she qualified for the program due to service dependency, as the LOCD indicates she had been a program applicant for more than one year. (Exhibit 4). Appellant also stated Ms. Edwards obtained reports from her doctors to determine whether she required their services in order to maintain her functional status, however, the reports were not up to date. Appellant then related a number of recent doctor's visits and a hospitalization that took place several months after her reassessment for the MI Choice program on June 19, 2012. Accordingly this information could not have been considered by the waiver agency at the time she was determined to be ineligible for the program.

Appellant also related that she receives steroid epidurals quarterly, and had received one about two weeks prior to her reassessment. This decreased her pain, increased her mobility, and gave her a boost of energy. Appellant stated she needs her steroid epidurals to maintain her functionality and she could not afford them without Medicaid. Petitioner acknowledged that she did go to St. Francis Camp on the Lake during the summer, a summer camp for cognitively disabled adults. Appellant stated she worked as an adviser, did some teaching, and would sit and help chop things in the kitchen. She acknowledged she was paid for her services during the summer.

The Appellant bears the burden of proving, by a preponderance of evidence, that the waiver agency did not properly terminate her MI Choice Waiver services. A preponderance of the material and credible evidence in this case establishes that the MI Choice Waiver agency acted in accordance with the policy contained in the Medicaid Provider Manual, and its actions were proper when it terminated the Appellant's MI Choice program services. The policy in the Medicaid Provider manual makes it clear that an individual must be financially eligible, functionally eligible, and meet the service dependency for the program. In this case the preponderance of the evidence does not show functional eligibility at the time of the Appellant's reassessment. Therefore, the

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Appellant has failed to prove that the waiver agency's actions were not proper when it terminated her MI Choice program services.

Based upon the reassessment performed by the waiver agent on June 19, 2012, and the doctor's records obtained by the Waiver Agency following the reassessment, the Appellant was not eligible for MI Choice program at the time they terminated her services. Therefore, the waiver Agency acted properly to terminate the Appellant from the program. Assuming a decline in the Appellant's condition following the reassessment, the Waiver Agency could reassess the Appellant and determine whether she has again become eligible for the program, but that does not change the Waiver Agency's prior determination that she had ceased to be medically eligible for the program at the time of the reassessment.

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**.

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: Jill Ann Smith
Barbara A. Stoy
Mike Daeschlein
Brian Barrie
Sherri King
Elizabeth Aastad

Date Mailed: 10/05/2012

***** 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.