

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

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IN THE MATTER OF:

Docket No. 2012-66083 EDW
Case No. [REDACTED]

[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.*, and upon Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Appellant appeared and testified on his own behalf. [REDACTED] Assistant Supervisor, represented the Department of Community Health's Waiver Agency, The Information Center, Inc. ("Waiver Agency" or "Information Center"). Care Managers [REDACTED] and [REDACTED] also testified as witnesses for the Waiver Agency.

ISSUE

Did the Department's MI Choice Waiver Agency properly deny Appellant's request for 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. The Department contracts with Information Center to provide MI Choice waiver services to eligible beneficiaries.
2. Information Center must implement the MI Choice Waiver Program in accordance to Michigan's waiver agreement, Department policy, and its contract with the Department.
3. On [REDACTED] Appellant applied for waiver services on Appellant's behalf and a Level of Care Determination (LOCD) was completed by Care Manager [REDACTED]. (Exhibit 1, pages 11-19).
4. Based on the answers Appellant gave during that determination, the Waiver Agency found that Appellant did not meet the criteria for the waiver program. (Exhibit 1, page 18). Appellant was subsequently notified of

the denial in writing and verbally. (Testimony of Appellant; Testimony of ██████████).

5. On ██████████ the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant's behalf over the denial of services. (Exhibit 1, page 7).

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. 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.

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, July 1, 2012, 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, the Waiver Agency decided to deny Appellant's services after finding that he did not meet the medical criteria for the waiver program. Appellant disputes that finding. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's decision should be affirmed.

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 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 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, July 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 1, page 13.]

Here, given Appellant's answers during the LOCD and his testimony during the hearing, it is clear that the Waiver Agency's decision with respect to Door 1 must be sustained. Appellant only seeks assistance with certain tasks and, with the exception of transferring, none of that requested assistance relates to the tasks identified in Door 1. Even if Appellant does require extensive assistance with transferring, that is not enough on its own to meet the criteria for Door 1.

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 1, page 14.]

Here, Appellant concedes that he was able to answer all of ██████████ memory questions during the intake. He also testified, however, that he was only able to do so because it was a "good" day and, within days after the intake, he was again exhibiting memory problems. Appellant also testified that his daughter makes many decisions for him and that he has a problem with making people understand him.

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. At that time in this case, Appellant exhibited no memory difficulties when answering questions and he passed a memory/mental test given by ██████████. (Exhibit 1, pages 27-36). Moreover, while ██████████ found that Appellant was only modified independent in decision-making, she also found that he has no difficulty making himself understood. Given Appellant's clear testimony during the hearing, this Administrative Law Judge also finds that Appellant has no difficulty making himself understood. Given the above evidence,

Appellant failed to meet his burden of proof and the Waiver Agency properly found that he did not pass through Door 2.

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 1, page 15.]

Here, during the intake, Appellant reported 3 physician visits and 4 physician order changes during the last 14 days. If true, that would meet the criteria for Door 3. However, Appellant was unable to produce any evidence of physician visits or order changes during the intake or at the hearing. Moreover, he also testified that his orders only changed after the intake and 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. Any subsequent order changes are therefore not relevant and the Waiver Agency properly found that Appellant did not pass through Door 3.

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 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 [Exhibit 1, page 15.]

Here, the only treatment or condition that Appellant identified as having with respect to Door 4 was “Daily oxygen therapy.” However, it is undisputed that Appellant only uses oxygen at night. To pass through Door 4, an applicant must require oxygen therapy 24 hours a day.

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 1, page 16.]

Here, while Appellant testified regarding some cardiac therapy he underwent, he was not going through any speech therapy, occupational therapy or physical therapy at the time of the assessment. Aldridge also credibly testified that Appellant did not report any type of therapy whatsoever during the intake.

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 1, page 17.]

Here, it is undisputed that Appellant did not delusions or hallucinations, and that his did not exhibit most of the identified behaviors.

Appellant did testify that he wanders, but his definition of wandering includes taking walks for relaxation or exercise, and does not match the symptoms identified in the LOCD tool: “**Wandering** – Moved with no rational purpose, seemingly oblivious to needs and safety.” (Exhibit 1, page 16). Appellant’s long walks do not equate to wandering and he did not qualify through Door 6.

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 1, page 17.]

Here, Appellant was not a current participant in the program and clearly did not pass through Door 7.

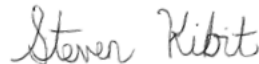
Accordingly, for the reasons discussed above, the Waiver Agency properly found that Appellant did not meet the criteria for the waiver program and that his application should be denied.

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 denied Appellant's application for services through the MI Choice program.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



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

cc:



Date Mailed: 10/19/2012

Grubbs, Thomas F.
Docket No. 2012-66083 EDW
Decision and Order

***** 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.