

**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:

**Docket No. 2012-53283 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 the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED], [REDACTED], appeared and testified on Appellant's behalf.

[REDACTED], represented the [REDACTED], the [REDACTED] (" [REDACTED] "). [REDACTED], also testified as a witness for [REDACTED].

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 a [REDACTED] who has been diagnosed with depression, hypertension, arthritis, osteoporosis, seizure disorder, transient ischemic attack (TIA), anxiety, sleep apnea, neuropathy, mitral valve prolapse, spinal stenosis NOS, and Raynaud's Syndrome. (Exhibit 1, attachment 1, pages 1, 10-11).
2. [REDACTED] is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of [REDACTED] waiver services.
3. Appellant has been enrolled in and receiving [REDACTED] waiver services through [REDACTED] for over a year. ([REDACTED]).
4. On [REDACTED] [REDACTED]

completed a reassessment of Appellant's needs and services. (Exhibit 1, attachment 1, pages 1-19).

5. Based on Appellant's reports and her own observations, ██████████ found that Appellant was medically ineligible for the ██████████ and that her services should be terminated. (Exhibit 1, attachment 1, page 19; ██████████)
6. On ██████████ ██████████ sent Appellant written notice that it was terminating her services through the waiver program because she was medically ineligible. (Exhibit 1, attachment 3, page 1).
7. Appellant, with the help of her supports coordinator, appealed the termination to ██████████ over the phone, but her appeal was denied. (██████████).
8. ██████████ also issued a ██████████ on ██████████ indicating that Appellant was being permanently disenrolled from the program. (Exhibit 1, attachment 4, page 1).
9. Subsequently, the Department received a Request for Hearing regarding the termination of services in this case. (Exhibit 2, page 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. 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, January 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, Senior Alliance decided to terminate Appellant's services after finding that ██████████ did not meet the medical criteria for the waiver program. Appellant and her representative dispute that finding. For the reasons discussed below, this Administrative Law Judge finds that the Waiver Agency's decision to terminate 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 Chapter,
January 1, 2012, pages 1-2)

In this case, the only issues that appear to be in dispute are whether Appellant meets the requirements for Door 1, Door 2, or Door 7.

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, attachment 2, page 3)

Here, ██████████ found Appellant to be independent in bed mobility, transfers, toilet use and eating during the assessment. According to ██████████ she based her findings on Appellant's answers and her own observations. ██████████ also testified that Appellant appeared alert and oriented when answering questions. There is no record of any medical conditions that would hinder Appellant's ability to answer questions correctly.

██████████ testimony generally confirms what ██████████ testified to. While ██████████ testified regarding some difficulties in transferring, he also acknowledged that Appellant is independent in the other tasks identified in Door 1. Moreover, the tasks identified by ██████████ as areas where his ██████████ needs physical assistance, such as housekeeping and yard work, are not encompassed by Door 1. Accordingly the Waiver Agency's decision with respect to Door 1 should be affirmed.

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, attachment 2, page 4)

Here, Appellant reported short-term memory problems during the reassessment, but she passed a memory test and, according to ██████████ appeared alert and oriented during the reassessment. During the hearing, ██████████ also reported witnessing ██████████ memory problems. However, he does concede that Appellant has never been diagnosed with any cognitive problems.

In any event, even assuming for the sake of argument that Appellant has memory problems, ██████████ is not sufficiently impaired in decision-making or making herself understood to pass through Door 2. As noted above, Appellant has never been diagnosed with any cognitive problems. Moreover, no one testified that she has any difficulty in making herself understood and, outside of financial decisions; it is undisputed that she makes decisions on her own behalf. Given the evidence in the record, the Waiver Agency's decision with respect to Door 2 must be affirmed.

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, attachment 2, page 7)

Here, the Waiver Agency found that, while Appellant is a current participant in the program, ██████████ does not have a service dependency and does not qualify under Door 7. In support of that finding, ██████████ relied on Appellant's reports regarding her

limited needs and availability of services through the Department of Human Services Home Help Program. ██████████ referred Appellant to the Home Help Program at the time of the termination and offered to help her fill out an application. Appellant declined that assistance at the time.

In response, Appellant's representative did not dispute that the Home Help Program may satisfy Appellant's needs and he requested assistance in completing an application for those services on behalf of his ██████████. ██████████ agreed to assist the Appellant and ██████████ after the hearing.

Appellant's representative also testified that Appellant's medical conditions have worsened since her services were terminated. However, this Administrative Law Judge's jurisdiction is limited to reviewing the Waiver Agency's decision in light of the information available at the time it made its decision. Here, that information was provided by Appellant and it clearly demonstrates that she did not meet the criteria for services. Therefore, the Waiver Agency's decision must be affirmed.

Moreover, even accepting the testimony regarding Appellant's need for assistance, it does appear that her needs can be met through Home Help. To the extent Appellant's condition has worsened since the termination and there is additional information to provide, she must make a new request to the Waiver Agency for services. As for the decision before this Administrative Law Judge, it is affirmed.

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 J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

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Docket No. 2012-53283 EDW
Decision and Order

Date Mailed: _____

***** 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.