STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 2013-35694 EDW

[redacted] [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. 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], Assistant Supervisor Care Management Department, appeared and testified on behalf of [redacted] and the Department of Community Health's (Department) Waiver Agency. [redacted] R.N., Appellant's Nurse Supports Coordinator also testified for 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 [redacted]-year-old woman, [redacted] who was enrolled in the MI Choice Waiver Program. (Exhibit A, Attachment A and testimony).

2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.

3. On [redacted], Appellant was enrolled in the MI Choice Waiver Program. Appellant was determined to be functionally and financially eligible for the Waiver Program, qualifying on the Nursing Facility Level of Care Determination (LOCD) through Door 1. (Exhibit A, Attachment A).

4. On [redacted], a 90-day reassessment was conducted with Appellant by [redacted], SW and [redacted], RN. It was determined that Appellant's condition had improved and a LOCD was completed to determine Appellant's continued eligibility for the MI Choice Waiver Program. The Waiver Agents found Appellant no longer met the medical eligibility requirement for the MI Choice Waiver Program. (Exhibit A, Attachments B & C, and testimony).

5. On [redacted], the Waiver Agency sent an Advance Action Notice to the Appellant notifying her she was no longer medically eligible for the MI Choice Waiver Program and of the termination of her MI Choice services within 12 days of the notice. Appellant requested an immediate review of this decision with MPRO. (Exhibit A, Hearing Summary, Exhibit B, and testimony).

6. On [redacted] MPRO sent an Advance Action Notice to the Appellant notifying her she was no longer medically eligible for the MI Choice Waiver Program and of the termination of her MI Choice services within 90 days of the notice. (Exhibit A, Attachment D and testimony).

7. On [redacted], MAHS received the Appellant's request for an Administrative Hearing. (Exhibit 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 (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*, January 1, 2013, 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.

MI Choice uses a case status classification system to determine the reassessment and service plan review and the update schedule for program participants. Supports coordinators designate a case status for each participant at the time of service plan development or reassessment using professional judgment in determining participant needs.

Participants classified with active status are those individuals with the most difficult, unstable, or complex needs that require more intensive involvement. Supports coordinators classify participants as active when it is determined that the participant requires a reassessment every 90 days, or more frequently when necessary.

Participants classified with maintenance status are more physically stable and less complex than active cases. Monitoring is required less frequently. At the time of the second reassessment (180 days), the supports coordinator may designate the participant as on maintenance status. Subsequent to the second reassessment, the supports coordinator may designate maintenance status when the participant's situation is currently stable. The participant's level of frailty, risk, or illness determines that the participant requires a reassessment every 180 days or more frequently when necessary.

Supports coordinators may change the case status classification of participants as indicated upon reassessment. Regardless of a defined case status classification, participants may refuse reassessment. The supports coordinator must note this refusal in the case record. However, to maintain program eligibility, the supports coordinator must assess all program participants at least every 180 days. A refusal which prevents a redetermination within the 180-day window is cause for termination from the program. (p. 4, emphasis added).

[redacted]

Decision and Order

The Waiver Agency provided reliable evidence that on [redacted] a 90-day reassessment was conducted with Appellant by [redacted] Social Work Supports Coordinator and [redacted], RN, Nurse Supports Coordinator. It was determined that Appellant's condition had improved and a LOCD was completed to determine Appellant's continued eligibility for the MI Choice Waiver Program. The Waiver Agents found Appellant no longer met the medical eligibility requirement for the MI Choice Waiver Program.

On Door 1, Appellant demonstrated for the supports coordinators her capability to perform bed mobility, she was able to pull herself into the bed and move in the bed independently. Appellant reported she was independent in transferring herself, toileting herself, and in eating. Appellant only scored four points on Door 1, and six points are required to qualify under this door.

On Door 2, the supports coordinators determined that within the past seven days the Appellant did not have any difficulty remembering significant matters in her daily life or to take any of her required medication. Appellant did not have any problems making decisions on her own concerning her tasks of daily living. Accordingly they found Appellant did not qualify under Door 2.

On Door 3, the supports coordinators determined that within the past seven days the Appellant had not been examined by any doctors, practitioners, or doctor's assistants that included one doctor visit and two order changes, or two doctor's visits and at least two order changes. Accordingly they found Appellant did not qualify under Door 3.

On Door 4, the supports coordinators determined that the Appellant was not being treated for and did not have any of the conditions listed under Door 4 within the past 14 days. (See Exhibit A, Attachment C, p. 5). Accordingly they found Appellant did not qualify under Door 4.

On Door 5, the supports coordinators determined that the Appellant had not been scheduled for any skilled rehabilitation therapies including speech therapy, occupational therapy, or physical therapy within the past 7 days and was not currently receiving any such skilled therapies. Accordingly they found Appellant did not qualify under Door 5.

On Door 6, the supports coordinators determined that the Appellant did not have any issues with wandering, verbal or physical abuse, socially inappropriate behavior, resisting care, hallucinations or delusions within the past 7 days. Accordingly they found Appellant did not qualify under Door 6.

Following the in-person assessment Appellant was advised she was no longer medically eligible for the program based on the reassessment. [redacted] stated she sent Appellant an Advance Action notice advising that her MI Choice case would be closed and her services would be terminated. (See Exhibit B). Appellant requested an immediate review of the Waiver Agency's by MPRO. On [redacted] MPRO sent Appellant an Advance Action Notice notifying her she was

no longer medically eligible for the MI Choice Waiver Program and of the termination of her MI Choice services within 90 days of the notice. (See Exhibit A, Attachment D).

Appellant testified that she felt the supports coordinators rushed through the reassessment in February. Appellant stated she explained to the supports coordinators she desperately needed help. Appellant's testimony at the hearing and her Request for Hearing (Exhibit 1) pointed out that Appellant was going to have two additional surgeries and medical procedures in the future, and she believed that the supports coordinators did not document these matters at the time of the reassessment. Appellant indicated she was now having some small lapses in memory, such as forgetting to take her asthma medicine. Appellant also indicated she has screws loose in her spinal area that need to be fixed. Appellant stated her family members are unreliable and she can only count on her landlord to give her some assistance once in a while.

The Waiver Agency witnesses responded by stating that their February reassessment depended on what the Appellant's condition was at that time. They could not consider future surgeries and what her expected condition would be at that time. The Waiver Agency stated that Appellant's services were not stopped during the pendency of the appeal, but Appellant did advise that if she would have to repay for services if the Waiver Agency's actions were upheld at the hearing, she would not be able to repay for the services.

The Waiver Agency further advised that since the services were not terminated pending the hearing they did another 90-day reassessment on [redacted] and the Appellant was again found to be medically eligible for the MI Choice Waiver program. The Agency and the Appellant were encouraged to get in contact as soon as possible to determine what services should be provided based on the [redacted] redetermination of eligibility.

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 Waiver 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 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 [redacted] the Appellant was not eligible for MI Choice program at the time they terminated her services.

[redacted]
Decision and Order

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

Date Signed: [redacted]

Date Mailed: [redacted]

WDB/db

cc: [redacted]

***** 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.