

**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. 14-015146 EDW

██████████

██████████

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 ██████████, Social Worker, Appellant's Field Care Manager with ██████████ appeared and testified on the Appellant's behalf. Appellant also testified on his own behalf.

██████████, R.N., Quality and Training Manager, appeared and testified on behalf of the Department of Community Health's (Department) Waiver Agency, ██████████, ██████████, R.N., Nurse Supports Coordinator also testified on behalf of the Department's 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 ██████-year-old, (DOB: ██████████), who was enrolled in the MI Choice Waiver Program. (Exhibit A, p. 2, 24 and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries.

3. On ██████████, ██████████ R.N., Nurse Supports Coordinator and ██████████, LLBSW, Social Work Supports Coordinator met with Appellant and his sister ██████████ in his apartment for a reassessment to determine Appellant's continued eligibility for the MI Choice Waiver Program. The Supports Coordinators completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) and it was determined that the Appellant was no longer eligible for the MI Choice Waiver Program based on the LOCD. Appellant had originally qualified for the Waiver program under Door 1 of the LOCD due to needing limited assistance with transfers. During the reassessment the Supports Coordinators were advised that the Appellant was now living alone and while it was difficult he was now performing his own transfers. Accordingly Appellant no longer qualified under Door 1, or any of the other Doors on the LOCD. (Exhibit A, pp. 3-21, 24-30, 32-38 and testimony).
4. On ██████████, Appellant was sent an Advance Action notice advising him that based on the LOCD he did not qualify for the MI Choice Waiver program and his MI Choice Waiver Services would be terminated █ days from the date of the notice. Appellant was advised of his rights to a Medicaid Fair Hearing. (Exhibit A, p. 41).
5. Appellant requested an immediate review from ██████████ of the LOCD completed on ██████████ and ██████████ found that the Appellant was not medically eligible and uphold the LOCD conducted by the Waive Agency. (Exhibit A, p. 1).
6. On ██████████, 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 requested 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*, October 1, 2014, 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) and section 1915(b) of the Social Security Act. MDCH carries out its waiver obligations through a network of enrolled providers that operate as Prepaid Ambulatory Health Plans (PAHPs). **(revised per bulletin MSA 14-26)** 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 [CHANGE MADE 10/1/14]

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 requires at least two waiver services, one of which must be Supports Coordination, **(revised per bulletin MSA 14-26)** 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.2, emphasis added).

* * *

2.2.A. MICHIGAN MEDICAID NURSING FACILITY LEVEL OF CARE DETERMINATION [CHANGES MADE 10/1/14]

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 person completing the LOCD must either be waiver agency staff or in the waiver agency's provider network. **(text added 10/1/14)**

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. (p. 2).

* * *

2.3.B. REASSESSMENT OF PARTICIPANTS [CHANGES MADE 10/1/14]

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.

The supports coordinator documents that the participant continues to meet the nursing facility level of care within the case record, specifying the appropriate "door" through which the participant meets level of care criteria. Reassessments are conducted in person 90 days after the initial assessment, with a reassessment every subsequent 180 days, or sooner upon a significant change in the participant's condition. Supports coordinators track reassessment dates within the waiver agency's information systems. If a supports coordinator determines the participant no longer meets the nursing facility level of care, the supports coordinator

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initiates program discharge procedures and provides the participant with advance notice and information on appeal rights. **(revised per bulletin MSA 14-26)** A refusal which prevents a redetermination within the 180-day window is cause for termination from the program. **(revised per bulletin MSA 14-27)** (p. 4).

The Waiver Agency provided reliable evidence that on [REDACTED], R.N., Nurse Supports Coordinator and [REDACTED], LLBSW, Social Work Supports Coordinator met with Appellant and his sister [REDACTED] in his apartment for a reassessment to determine Appellant's continued eligibility for the MI Choice Waiver Program. The Supports Coordinators completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) and it was determined that the Appellant was no longer eligible for the MI Choice Waiver Program based on the LOCD.

[REDACTED] stated the Appellant had originally qualified for the Waiver program under Door 1 of the LOCD due to needing limited assistance with transfers. During the reassessment on [REDACTED] the Supports Coordinators were advised that the Appellant had improved, he was now living alone, and while it was difficult he was now performing his own transfers. [REDACTED] stated when they arrived at the Appellant's apartment house they went to the wrong side of the building, and they were able to observe the Appellant when he came out to meet them. Appellant also told the Supports Coordinators that he could drive and do some of his own shopping. Accordingly, the Appellant no longer qualified under Door 1, or any of the other Doors on the LOCD. On [REDACTED], Appellant was sent an Advance Action notice advising him that based on the LOCD he did not qualify for the MI Choice Waiver program and his MI Choice Waiver Services would be terminated [REDACTED] days from the date of the notice. Appellant was advised of his rights to a Medicaid Fair Hearing. (See Exhibit A, pp. 3-21, 24-30, 32-38, 41 and testimony).

The documents submitted by the Waiver Agency support the testimony of [REDACTED] that the Appellant no longer met the qualifications for MI Choice Waiver Services based on the LOCD completed on [REDACTED]. (See Exhibit A). It was determined, that the Appellant was now living alone and while difficult, that the Appellant was independent in transfers. Accordingly, the Supports Coordinators properly determined the Appellant did not pass through Door 1. Appellant also requested an immediate review from [REDACTED] of the LOCD completed on [REDACTED], [REDACTED] and [REDACTED] found that the Appellant was not medically eligible and upheld the LOCD conducted by the Waive Agency. (Exhibit A, pp. 1).

[REDACTED] testified he made the initial referral on the Appellant's behalf for MI Choice Waiver services. [REDACTED] said the Appellant has some cognitive issues and sometimes forgets things like taking his medications, or forgetting dates like the date of the hearing. He said the Appellant uses a walker and has an unsteady gait. [REDACTED] says the Appellant does need help, but he will try to do everything for himself. He said the Appellant's sister comes by frequently to assist the Appellant. [REDACTED] said he did not agree with the reassessment done by the Waiver Agents, but acknowledged that he

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wasn't present during the reassessment. When questioned about his reason for disagreement, he acknowledged that it was because the Supports Coordinators were not give complete or accurate information by the Appellant and his sister at the time of the reassessment. ██████████ said he thought there should be a new assessment.

Appellant also testified that his sister made him angry during the reassessment. Appellant said he is able to get up, and can go to the bathroom and stuff on his own. He said his mobility is limited, that it took him a long to get up and meet the workers when they came for the reassessment. Appellant said he is limited in how he can do things, since he weighs almost ██████ lbs. Appellant said he needs to have someone go with him whenever he goes to the doctor, and that he has trouble remembering stuff. He said he can't do his laundry, and his sister does it for him. Appellant said he can get in the car and go to ██████████ or ██████████ sometimes, and will shop where they have a power cart because he can't walk through the store. Appellant indicated he has a lot of medical problems and thinks it is unfair that the little help he was getting was taken away. Appellant said he still needs help, and his son is staying with him now to help him out and cooking his meals because he is unable stand over the stove long enough to cook his own meals.

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly terminate his enrollment in the MI Choice Waiver program based upon the results of the reassessment completed on ██████████. 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 enrollment in the MI Choice program based upon the information they received at the ██████████ reassessment.

The policy in the Medicaid Provider Manual makes it clear that an individual cannot be enrolled in the MI Choice Waiver Program unless the individual meets the functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination. The preponderance of the evidence demonstrates that the Appellant did not meet the functional eligibility based on the information the Waiver Agent's received at the time of their reassessment completed on ██████████. The Waiver Agency's determination was also upheld by the immediate review completed by ██████████. The Appellant has failed to prove the Waiver Agency's actions were not proper when it terminated his enrollment in the MI Choice program.

Based on the information obtained during the reassessment performed by the Waiver Agents the Appellant was not eligible for MI Choice program at the time they terminated his enrollment in the program, because he no longer met the functional eligibility requirements for the program. The Waiver Agency advised if the Appellant feels his mobility is getting worse he can always make a request for them to come out and do another screening.

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 acted properly when it terminated the Appellant's enrollment in the MI Choice Waiver program.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, 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.