

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. 2014-19212 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 ██████████. The Appellant appeared and testified on her own behalf.

██████████, Clinical Manager for the MI Choice Waiver Program, appeared and testified on behalf of the Department of Community Health's (Department) Waiver Agency, the ██████████, MSW, LBSW Appellant's Social Work 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. (Exhibits C, D and testimony).
2. The Department contracts with the Waiver Agency to provide MI Choice Waiver services to eligible beneficiaries. (Testimony).
3. On ██████████, ██████████, ██████████, MSW, LBSW, and ██████████, ██████████, RN, Social Work and Nurse Supports Coordinators met with Appellant in her apartment for a ██████-day reassessment to determine

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Appellant's continued eligibility for the MI Choice Waiver Program. They completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). They found the Appellant was not eligible for the MI Choice Waiver Program based on the LOCD. (Exhibits B-D and testimony).

4. On [REDACTED], Appellant was sent an Advance Action notice advising her that based on the LOCD she did not qualify for the MI Choice Waiver program and her MI Choice Waiver Services would be terminated [REDACTED] days from the date of the notice. Appellant was advised of her rights to a Medicaid Fair Hearing. (Exhibit A).
5. 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 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, 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

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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, emphasis added).

* * *

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

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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.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 reliable evidence that on ██████████ ██████████ MSW, LBSW, and ██████████, RN, Social Work and Nurse Supports Coordinators met with Appellant in her apartment for a █-day reassessment to determine Appellant's continued eligibility for the MI Choice Waiver Program. They completed a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). They found the Appellant was no longer eligible for the MI Choice Waiver program based on the LOCD.

██████████ testified the Appellant was not eligible under Door 1: Activities of Daily Living Dependency, because the Appellant was independent with bed mobility, transfers, toileting, and eating. ██████████ testified the Appellant was observed transferring on and off the couch on her own. ██████████ noted the Appellant lives alone and was able to get in and out of bed on her own. The Appellant was not eligible under Door 2: Cognitive Performance, because while she had minimal short term memory deficit, she was modified independent with decision making as she continued to make safe decisions and only has some difficulty when faced with new tasks or circumstances, she is able to manage her finances effectively, and had no trouble making herself understood. (See Exhibits B & D).

██████████ testified the Appellant was not eligible under Door 3: Physician Involvement, because she had no physician visits and no order changes within the past █ days. The Appellant was not eligible under Door 4: Treatments and Conditions, because she had none of the treatments and conditions listed under Door 4 within the

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past [REDACTED] days. The Appellant was not eligible under Door 5: Skilled Rehabilitation Therapies, because she had not received any skilled therapies within the past [REDACTED] days. (See Exhibits B & D).

[REDACTED] testified the Appellant was not eligible under Door 6: Behavioral Challenges, because she did not wander, she was not verbally abusive, she was not physically abusive, she was not socially inappropriate, and she did not resist care. Finally, the Appellant was not eligible under Door 7: Service Dependency, because she had not been a participant in the MI Choice Waiver program or a nursing home resident for over a year. [REDACTED] testified the Appellant was enrolled in the MI Choice Waiver program in [REDACTED]. [REDACTED] testified that she and Nurse [REDACTED] agreed on the results of the reassessment. (See Exhibits B & D). [REDACTED] testified she has spoken to the vendor providing the Appellant with her waiver services and they are not providing the Appellant assistance with any of her ADLs only meal preparation and housekeeping.

Appellant testified that she thought the assessment was done poorly. Appellant indicated she was asked if she needed help with taking a shower and she said yes, but answered no to all the other questions she was asked, because she thought she could do them all, but now says she can't. The Appellant testified she is restricted in everything she was asked about. She testified she gets help with transfers in and out of bed. She said that she gets help early in the day when there is someone there to help her, but most of the time there is no one there to help her. She said she gets help getting off the toilet when others are around otherwise she has to manage by herself.

Appellant said she has help with cooking, and needs some help with eating as she has Parkinson's disease. She stated that she needs help with laundry and shopping. Appellant stated that she was confused when the assessment was conducted and she answered all the questions the wrong way. She acknowledged that she was answering the questions differently at the hearing than she did at the time of the reassessment.

The Appellant bears the burden of proving, by a preponderance of evidence, that the Waiver Agency did not properly terminate her enrollment in the MI Choice Waiver program based upon the results of the reassessment on [REDACTED]. 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.

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 on [REDACTED]. The

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Appellant has failed to prove the Waiver Agency's actions were not proper when it terminated her enrollment in the MI Choice program.

Based on the information obtained during the reassessment performed by the Waiver Agents on [REDACTED], the Appellant was not eligible for MI Choice program at the time they terminated her enrollment in the program, because she did no longer met the functional eligibility requirements for the program.

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 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 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.