

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. 2014-34661 EDW

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon a Request for Hearing filed by Appellant.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appellant's mother was also present as a witness for Appellant. ██████████, supports coordinator, appeared and testified on behalf of the Department of Community Health's Waiver Agency, ██████████ ("Waiver Agency" or "██████████"). ██████████, Waiver Manager, was also present as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly decide to 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 ██████ year-old female who has been diagnosed with coronary artery disease; chronic obstructive pulmonary disease; hypertension; arthritis; osteoporosis; dementia; a stroke; seizure disorder; traumatic brain injury; depression; renal failure; cancer; and diabetes mellitus. (Respondent's Exhibit A, pages 2, 20-21).
2. ██████████ is a contract agent of the Department and the agency responsible for the provision of Appellant's MI Choice services.
3. Appellant has been receiving ██████ hours per week of Community Living Supports (CLS) through the Waiver Agency since ██████████ (Respondent's Exhibit A, page 1; Testimony of Appellant).

4. MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). (Medicaid Provider Manual (MPM), April 1, 2014 version, MI Choice Waiver Chapter, page 1).
5. At that time she was approved for services, it was determined that Appellant qualified for the waiver program through Door 5 of the LOCD due to the skilled rehabilitation therapies she was receiving. (Testimony of ██████████)
6. Medicaid policy also requires nursing facility residents to meet the outlined medical/functional criteria found in LOCD evaluation tool on an ongoing basis. (MPM, April 1, 2014 version, MI Choice Chapter, page 2).
7. Appellant's skilled rehabilitation therapies stopped on ██████████ (Respondent's Exhibit A, page 28; Testimony of Appellant).
8. On ██████████ Chambers performed a new LOCD and assessment in Appellant's home. (Respondent's Exhibit A, pages 3-10, 13-30).
9. Based on that LOCD and assessment, the Waiver Agency determined that Appellant no longer qualified for waiver services. (Respondent's Exhibit A, page 30; Testimony of ██████████).
10. On ██████████, the Waiver Agency also sent Appellant written notice that her services would be terminated, effective ██████████ because she no longer met the criteria for the program. (Respondent's Exhibit A, page 1).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-2).
12. Due to the timing of the request for hearing, Appellant's services have remained in place while the appeal is pending. (Testimony of Appellant; Testimony of ██████████).

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.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The

program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case ██████████, 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)

A waiver under section 1915(c) of the Social Security Act allows a State to include as "medical assistance" under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF (Skilled Nursing Facility), ICF (Intermediate Care Facility), or ICF/MR (Intermediate Care Facility/Mentally Retarded), and is reimbursable under the State Plan. See 42 CFR 430.25(c)(2).

Types of services that may be offered include:

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR 440.180(b)

However, with respect to the waiver program, federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

Here, Senior Alliance decided to terminate Appellant's services after finding that she no longer met the criteria for the waiver program. 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, April 1, 2014 version
MI Choice Waiver Chapter, pages 1-2*

Pursuant to the above policy, the Waiver Agency determined that Appellant did not pass through any of the seven doors and was therefore ineligible for the program.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in terminating services.

The ██████████ LOCD was the basis for the action at issue in this case. In order to be found eligible for Medicaid nursing facility coverage the Appellant must have met the requirements of at least one door:

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

Door 2
Cognitive Performance

Scoring Door 2: The applicant must score under one of the following three options to qualify under Door 2.

1. "Severely Impaired" in Decision Making.
2. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."
3. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

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.

Door 4
Treatments and Conditions

Scoring Door 4: The applicant must score "yes" in at least one of the nine categories above [Stage 3-4 pressure sores; Intravenous or parenteral feedings; Intravenous medications; End-stage care; Daily tracheostomy care, daily respiratory care, daily suctioning; Pneumonia within the last 14 days; Daily oxygen therapy; Daily insulin with two order changes in last 14 days; Peritoneal or hemodialysis] and have a continuing need to qualify under Door 4.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The applicant must have required at least 45 minutes of active ST, OT or PT (scheduled or delivered)

in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5.

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.

Door 7
Service Dependency

Scoring Door 7: The applicant must be a current participant [and has been a participant for at least one (1) year] and demonstrate service dependency under Door 7.

In this case, the Waiver Agency determined that Appellant no longer passed through any of the 7 Doors and was therefore ineligible for the waiver program.

Given the evidence and testimony presented during the hearing, it is clear that the Waiver Agency’s decision must be sustained. Appellant testified that she requires some assistance in her daily activities, including assistance with housework and meal preparation, but none of that requested assistance relates to the tasks identified in Door 1. Similarly, while Appellant identified her significant medical problems, none of the conditions or effects of those conditions meet the criteria for passing through Doors 2, 4, or 6. Moreover, the medical treatment Appellant receives does not meet the criteria required by Doors 3, 4, or 5. Appellant also confirmed that she no longer received the skilled rehabilitation therapies identified in Door 5 and was not scheduled to receive any in the future at the time of the LOCD in this case. With respect to Door 7, Appellant has not been a participant in the program for at least one year.

Appellant did testify that her condition has worsened since the LOCD was performed in this case and that her doctor has again prescribed physical therapy for her. However, this Administrative Law Judge’s jurisdiction is limiting to reviewing the Waiver Agency’s decision in light of the information available at the time of that decision. Here, given the information available at the time, Appellant did not meet the criteria for the program.

[REDACTED]
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To the extent Appellant's circumstances have changed or she has new or additional information to provide, Appellant is free to reapply for waiver services at any time. The decision to terminate services at issue in this appeal, however, must be 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 decided to terminate Appellant's services based on the available information.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision to terminate Appellant's services is **AFFIRMED**.

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.