

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 15-006844 EDW

Case No. ██████████

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 Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Manager of New Business Strategies, appeared and testified on behalf of the Michigan Department of Health and Human Services' Waiver Agency, the Area Agency on Aging 1B ("AAA" or "Waiver Agency").

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. AAA is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. Between ██████████ and ██████████, Appellant was enrolled in the MI Choice Waiver Program and received services through AAA. (Testimony of Appellant; Testimony of Lavery).
3. In ██████████, Appellant reapplied for the waiver program and a new Level of Care Determination (LOCD) was performed. (Testimony of Lavery).
4. The Waiver Agency found that Appellant passed through the LOCD through Door 3 due to the number of recent appointments with her doctors and/or order changes, and Appellant was again approved for services. (Testimony of Lavery).
5. On ██████████, AAA staff completed a face-to-face reassessment and new LOCD with Appellant in her home. (Exhibit B, pages 1-15; Exhibit F, pages 1-6).
6. During that determination, AAA found that Appellant was not eligible for the waiver program because she did not pass through any of the seven doors of the LOCD.

(Exhibit F, pages 1-6; Testimony of Lavery).

7. On ██████████, the Waiver Agency also sent Appellant written notice that her services would be terminated on ██████████ because she did not qualify for the program. (Exhibit A, pages 1-2).
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter. (Exhibit 1, 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.

Appellant is seeking 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 to the Michigan Department of Health and Human Services. Regional agencies, in this case AAA, 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 through the waiver program 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)

The Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, with respect to the eligibility requirements for the program, the applicable version of the MPM states in part:

2.2 FUNCTIONAL ELIGIBILITY

The MI Choice waiver agency must verify an applicant's medical/functional eligibility for program enrollment by inputting a valid Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) into the online LOCD application. A valid LOCD is defined as an LOCD that was completed in-person with the applicant according to MDCH policy and put in the online LOCD application within 14 calendar days after the date of enrollment into the MI Choice program. (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 two covered MI Choice services, one of which must be Supports Coordination. 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 person completing the LOCD must either be waiver agency staff or in the waiver agency's provider network.

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 individuals who do not meet the LOCD criteria, a paper copy of the LOCD

must be retained in the applicant's record for no less than three years.

* * *

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 two covered services, one of which must be Supports Coordination, as determined through an in-person assessment and the person-centered planning process. Applicants must also agree to accept to receive MI Choice services on a regular basis, at least every 30 days.

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.A. INITIAL ASSESSMENT OF PARTICIPANTS

The MI Choice program has established the Resident Assessment Instrument – Home Care (iHC) as the approved assessment instrument for assessing the functional status of participants. The MI Choice Intake Guidelines, LOCD, and the iHC are not interchangeable tools. (Documents are available on the MDHHS website. Refer to the Directory Appendix for website information.)

Initial assessments are conducted by teams consisting of a minimum of a registered nurse and a social worker, both of whom are properly licensed by the State of Michigan.

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.

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 initiates program discharge procedures and provides the participant with advance notice and information on appeal rights. A refusal which prevents a redetermination within the 180-day window is cause for termination from the program.

*MPM, April 1, 2015 version
MI Choice Waiver Chapter, pages 1-4
(Emphasis added)*

Accordingly, based on the above policy, Appellant must qualify for functional eligibility through one of seven doors on a continuing basis and, if Waiver Agency staff determines that she no longer meets the functional level of care criteria for participation, another face-to-face online version of the LOCD must be conducted reflecting the change in functional status.

The ██████████ LOCD was the basis for the action at issue in this case. In order to be found eligible for the program, 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.

Here, AAA staff completed a face-to-face reassessment and new LOCD with Appellant on ██████████ and, during that determination, AAA found that Appellant was no longer eligible for the waiver program because she did not pass through any of the seven doors of the LOCD. During the hearing, its witness also went through each door and explained the specific findings that lead to its decision.


In response, Appellant does not dispute the Waiver Agency’s specific findings and she confirmed that the information contained in the LOCD is correct. Instead, Appellant testified that she has multiple sclerosis; she just got out of the hospital and does not know when she will have to return; and that she needs the transportation to doctor’s appointment and verbal support that her workers through the program were providing her. She also testified that she needs the cleaning the workers provided before her landlord put a stop to it.

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

Given the undisputed evidence in this case, Appellant has failed to meet that burden of proof and the Waiver Agency’s decision must be affirmed. Per policy, the Waiver Agency is required to look at the specific criteria and look-back periods outlined in the LOCD. In this case, Appellant testified that she still needs assistance with housekeeping and transportation, in addition to the emotional support provided by her workers, but there is no evidence that Appellant needs assistance with the specific tasks identified in Door 1. Moreover, the record demonstrates that Appellant’s medical conditions or the effects of those conditions do not meet the criteria for passing through Doors 2, 4, or 6; any medical treatment Appellant receives does not meet the criteria required by Doors 3, 4, 5 or 6; and that she does not pass through Door 7 because she has not been a program participant for a year and that, even if she had been, she could not demonstrate service dependency as required by Door 7 given her limited needs.

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 services.


Docket No. 15-006844 EDW
Decision and Order

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is **AFFIRMED**.

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: 

Date Mailed: 



CC: 

***** 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.