

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

P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-022070 EDW

████████████████████

Petitioner

_____ /

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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Petitioner appeared and testified on her own behalf. ██████████, Special Projects and Training Manager, represented the Department of Health and Human Services' Waiver Agency, the "██████████ Waiver Agency" or ██████████, ██████████, Supports Coordinator, and ██████████, Clinical Manager, also testified as witnesses for Respondent.

ISSUE

Did the Waiver Agency properly terminate Petitioner'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. Petitioner is a ██████████-year-old Medicaid beneficiary who has been diagnosed with coronary artery disease, hypertension, peripheral vascular disease, and diabetes mellitus. (Exhibit B, page 1; Exhibit D, pages 9-10).
2. Beginning on or about ██████████ Petitioner had been receiving services through ██████████ and the MI Choice Waiver Program. (Testimony of Supports Coordinator).
3. Specifically, Petitioner was approved for a ██████████ hours per week of Community Living Supports (CLS) and a Personal Emergency Response System (PERS) unit. (Exhibit F, pages 1-13; Testimony of Supports Coordinator).

██████████
Docket No. 15-022070 EDW
Decision and Order

4. On ██████████ ██████████ ██████████ ██████████ staff performed a routine annual assessment of Petitioner's needs and services in Petitioner's home. (Exhibit D, pages 1-20).
5. During that assessment, it was found that Petitioner required assistance with housework, shopping and transportation, but was independent in areas such as bed mobility, toileting, transferring, and eating. (Exhibit D, pages 15-17).
6. Given those findings, ██████████ staff also conducted a new Level of Care Determination (LOCD) with Petitioner. (Exhibit B, pages 1-9).
7. During that determination, ██████████ found that Petitioner was no longer eligible for the waiver program because she did not pass through any of the seven doors of the LOCD. (Exhibit A, page 1; Exhibit B, pages 1-9).
8. It then provided Petitioner with a Freedom of Choice form stating its decision. (Exhibit A, page 1).
9. ██████████ also sent Petitioner a written Advance Action Notice stating that her services would be terminated effective ██████████ because she was no longer eligible for waiver services. (Exhibit C, page 1).
10. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter regarding that termination. (Exhibit 1, pages 1-10).

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 ██████████, 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 Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, with respect to functional eligibility, 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.

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.

*MPM, October 1, 2015 version
MI Choice Waiver Chapter, pages 1-2*

Accordingly, based on the above policy, Petitioner 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, Petitioner 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, ██████ staff completed a face-to-face reassessment and new LOCD with Petitioner on ██████████ and, during that determination, ██████ found that Petitioner 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 made during the assessment that lead to its decision.

In response, Petitioner does not dispute the Waiver Agency's specific findings and she confirmed that the information contained in the assessment and LOCD are correct. Petitioner also testified that her medical conditions have not significantly changed and she still needs help in areas such as housework, shopping, meal preparation, laundry, and mobility. Petitioner further testified that she has some memory problems, but can make herself understood and does not have any other difficulties with decision-making. Petitioner also testified that she is on daily insulin, but that there were no recent order changes at the time of the LOCD or subsequently.

Petitioner 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, Petitioner 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, Petitioner testified that she still needs assistance in some tasks, but there is no evidence that she needs assistance with the specific tasks identified in Door 1. Moreover, the record demonstrates that Petitioner medical conditions or the effects of those conditions do not meet the criteria for passing through Doors 2, 4, or 6; any medical treatment Petitioner 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. Accordingly, the Waiver Agency properly terminated Petitioner's services pursuant to the above policy and on the basis that she no longer met the functional eligibility criteria 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 Petitioner's services.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.

Steven Kibit

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

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]
[REDACTED]
[REDACTED]
[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.