



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

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Date Mailed: March 22, 2016
MAHS Docket No.: 16-000088
Agency No.:

████████████████████

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on ██████████. Petitioner appeared and testified on his own behalf. ██████████, Clinical Director, appeared and testified on behalf of Respondent Senior Services. ██████████ Program Manager, and ██████████, Social Worker, also testified as witnesses for Respondent.

ISSUE

Did the Respondent 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. On or about ██████████, Petitioner began receiving services through Respondent and the MI Choice Waiver Program. (Testimony of Social Worker).
2. Specifically, Petitioner was approved for a ██████████ hours per day of Community Living Supports (CLS) and a Personal Emergency Response System (PERS) unit. (Exhibit A, page 1; Testimony of Petitioner; Testimony of Social Worker).
3. On ██████████, Senior Services staff conducted a routine reassessment and new Level of Care Determination (LOCD) with Petitioner in Petitioner's home. (Exhibit D, pages 1-7; Testimony of Social Worker).

4. During that determination, Respondent found that Petitioner was no longer eligible for the waiver program because he did not pass through any of the seven doors of the LOCD. (Exhibit A, page 1; Exhibit B, page 1; Exhibit C, page 1).
5. It then provided Petitioner with a Freedom of Choice form stating its decision. (Exhibit C, page 1).
6. Respondent also sent Petitioner a written Advance Action Notice stating that his services would be terminated effective [REDACTED] because he was no longer eligible for waiver services. (Exhibit A, page 1).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter regarding that termination. (Exhibit 1, pages 1-2).

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.

Petitioner 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 Senior Services, 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 Respondent determines that he 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 [REDACTED] 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, Senior Services staff completed a face-to-face reassessment and new LOCD with Petitioner on [REDACTED] and, during that determination, Respondent found that Petitioner was no longer eligible for the waiver program because he did not pass through any of the seven doors of the LOCD. During the hearing, the social worker who conducted the assessment also testified that her findings for each door were based primarily on Petitioner's reports and her interview with him.

In response, Petitioner did not dispute the Respondent's specific findings and, during questioning by the undersigned Administrative Law Judge, he confirmed that the information contained in LOCD was correct. However, Petitioner also testified that, while he was doing well at the time of the assessment, he has since worsen and weakened.

Petitioner bears the burden of proving by the preponderance of the evidence that Respondent erred in terminating his 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, Respondent is required to look at the specific criteria and look-back periods outlined in the LOCD. In this case, Petitioner testified that he still needed assistance with some tasks at the time of the LOCD, but there is no evidence that he needed assistance with the specific tasks identified in Door 1. Moreover, the record demonstrated that Petitioner medical conditions or the effects of those conditions did not meet the criteria for passing through Doors 2, 4, or 6; any medical treatment Petitioner received does not meet the criteria required by Doors 3, 4, 5 or 6; and that he did not pass through Door 7 because he had not been a program participant for a year. Accordingly, the Respondent properly terminated Petitioner's services pursuant to the above policy and on the basis that he no longer met the functional eligibility criteria for the program.

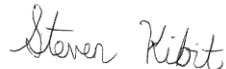
To the extent Petitioner's conditions or circumstances have changed or he has new or updated information to provide, he can always contact Respondent and reapply for services. With respect to the decision at issue in this case, however, the termination must be affirmed given the information available at the time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Petitioner's services through the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that

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



SK/db

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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

Community Health Rep

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]