



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-001405
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. Petitioner appeared and testified on her own behalf. [REDACTED], Community Services Director, appeared and testified on behalf of the Department of Health and Human Services' Waiver Agency, the [REDACTED].

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

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On or about [REDACTED], Petitioner began receiving services through Respondent and the MI Choice Waiver Program. (Testimony of Petitioner; Testimony of Respondent's representative).
2. Petitioner was approved for approximately [REDACTED] to [REDACTED] hours per week of Community Living Supports (CLS). (Testimony of Petitioner).

3. On [REDACTED], Respondent staff conducted a new Level of Care Determination (LOCD) with Petitioner. (Exhibit A, pages 1-9).
4. During that determination, Respondent 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, pages 1-9; Exhibit B, page 1).
5. It then provided Petitioner with a Freedom of Choice form stating its decision. (Exhibit B, page 1).
6. Respondent also referred Petitioner to the Adult Home Help Program at that time. (Exhibit A, page 9; Exhibit B, page 1).
7. Respondent further sent Petitioner a written Advance Action Notice stating that her services would be terminated effective [REDACTED] [REDACTED] because she was no longer eligible for waiver services. (Testimony of Respondent's representative).
8. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter. (Exhibit 1, page 1).
9. Petitioner's CLS have been maintained while this matter is pending. (Testimony of Petitioner; Testimony of Respondent's representative).

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 Respondent, 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, January 1, 2016 version
MI Choice Waiver Chapter, pages 1-2
(Emphasis added)*

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 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 [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, Respondent 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 she did not pass through any of the seven doors of the LOCD. During the hearing, its witness testified regarding the course of this case, but acknowledged that she had not completed the LOCD and that no specific box was checked with respect to Door 7.

In response, Petitioner testified that Respondent trumped up her information earlier in order to get her into the program when it was short on people and that nothing has changed since that time. She also testified that the termination in this case is based on the Respondent's worker taking issue with Petitioner allowing someone with a medical marijuana card to smoke marijuana in Petitioner's house. Petitioner further testified that her CLS worker will help her dress, bathe, run errands, do laundry, and anything else that may require standing for any significant period of time. Petitioner also noted that her CLS worker will sometimes assist her with toileting and helping her out of the bed in the morning. Petitioner also denied having any memory problems or cognitive issues. She further testified that she sees a doctor once a month; does not have any complex treatment or conditions; last had skilled therapy in [REDACTED]; and does not wander, physically abuse others, engage in socially disruptive behavior, resist care, or have delusions or hallucinations. Petitioner did note that she can occasionally engage in verbally abusive behavior and that she believes she might have to go into a nursing home if her services are terminated.

Petitioner bears the burden of proving by the preponderance of the evidence that Respondent erred in terminating her services.

Given the evidence in this case, Petitioner has failed to meet that burden of proof and the Respondent'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, while Petitioner testified that she still needs assistance with certain tasks, the evidence fails to reflect that she needs sufficient assistance with the specific tasks identified in Door 1 to pass through that door. Moreover, the record demonstrates that Petitioner's medical conditions or the effects of those conditions did not meet the criteria for passing through

Doors 2, 4, or 6, and that any medical treatment Petitioner received did not meet the criteria required by Doors 3, 4, 5 or 6. Additionally, while Petitioner had been a program participant for over a year and Respondent improperly failed to check a specific finding with respect to that door, its ultimate conclusion that Petitioner did not pass through that door is clear from the remainder of the LOCD and the Freedom of Choice form, and that decision was correct given the needs Petitioner identified during the hearing, most of which could be met through the home help program, and her lack of service dependency. Accordingly, the Respondent 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.

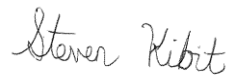
To the extent Petitioner argues that Respondent trumped up her information earlier in order to get her into the program when it was short on people and that the termination now is based solely on a worker's problems with Petitioner, her argument must be rejected. Any past error in admitting Petitioner to the program does not warrant keeping Petitioner in the program and the sole issue in this case is whether Petitioner met the requirements of at least one door of the LOCD on [REDACTED]. With respect to that issue, the undersigned Administrative Law Judge finds, for the reasons discussed above, that Respondent's determination that Petitioner did not pass through any door was proper and that Petitioner's services must therefore be terminated.

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.

IT IS THEREFORE ORDERED that

The Respondent'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]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]

Community Health Rep

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]