



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-003788
[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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on [REDACTED] [REDACTED], Petitioner's son, appeared and testified on Petitioner's behalf. Petitioner was also present 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] [REDACTED] [REDACTED] [REDACTED]. [REDACTED] [REDACTED], registered nurse/supports coordinator, and [REDACTED], Senior Supports Coordinator, 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:

1. Petitioner is a [REDACTED]-year-old Medicaid beneficiary who has been diagnosed with type 2 diabetes and depression. (Exhibit D, pages 1-2).
2. Since [REDACTED], Petitioner has been receiving services through Respondent and the MI Choice Waiver Program. (Testimony of [REDACTED]).
3. In [REDACTED], Petitioner qualified for the Waiver Program by passing

through Door 4 of the Level of Care Determination (LOCD) performed by Respondent. (Testimony of [REDACTED])

4. On [REDACTED], Respondent completed a new LOCD with Petitioner. (Exhibit B, pages 1-9).
5. During that screening, Respondent found that Petitioner was no longer eligible for the waiver program and that her services must be terminated because she did not pass through any of the seven doors of the LOCD. (Exhibit B, pages 1-9; Testimony of [REDACTED])
6. That same day, Respondent also provided Petitioner with a written form notifying Petitioner of its decision to terminate services and her appeal rights. (Exhibit A, page 1).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter regarding Respondent's decision. (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.

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.

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's staff completed a 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 witnesses also testified regarding the course of this case and how the specific findings in the LOCD were made.

In response, Petitioner's representative testified that Petitioner's health and needs are inconsistent, and that she had a relatively good week prior to the LOCD. He also testified that Petitioner is a brittle diabetic, with constantly fluctuating insulin rates, but that there were no order changes in the 14 days before the LOCD. Petitioner's representative further testified that Petitioner still needs assistance with things such as showering, finances, paperwork, taking medications, and mobility. However, while Petitioner needs assistance with finances and paperwork, her representative also testified that Petitioner does not have memory problems, can usually make her daily decisions, and can make herself understood.

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 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 and, while Petitioner 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 given the reports made during the LOCD. Moreover, the record also demonstrated that Petitioner's 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 did not meet the criteria required by Doors 3, 4, 5 or 6; and that she did not pass through Door 7 because she had not been a program participant for a year. Specifically, with respect to Door 4, the undersigned Administrative Law Judge would note that, while Petitioner has daily insulin, it was undisputed that there were no order changes during the relevant look-back period.

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's conditions or circumstances have changed or she has new or updated information to provide, she can always contact Respondent

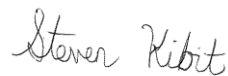
and reapply for services. With respect to the decision at issue in this case, however, the termination must be affirmed given the information available at the time.

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.

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

[REDACTED]

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

[REDACTED]

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