



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 1, 2016
MAHS Docket No.: 16-005089
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Petitioner's request for a hearing.

After due notice, a hearing was held on June 2, 2016. [REDACTED], the Petitioner, appeared on his own behalf. [REDACTED], Manager Eligibility Department, represented the Department of Health and Human Services' Waiver Agency, [REDACTED] ("Waiver Agency"). [REDACTED], Registered Nurse (RN) Manager, appeared as witnesses for the Waiver Agency.

During the hearing proceedings, the Waver Agency's Hearing Summary Packet was admitted as marked, Exhibit A-I, pp. 1-29.

ISSUE

Did the Waiver Agency properly determine Petitioner was no longer eligible for MI Choice Waiver services because the Petitioner did not meet the Nursing Facility Level of Care Determination (NFLOCD) criteria?

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 received services through the MI Choice Waiver program.
2. For the enrollment determination, it was found that Petitioner met the NFLOCD criteria on November 25, 2014, via Door 2. (Exhibit A, pp. 4-11)

3. On February 11, 2015, Petitioner's MI Choice Waiver services were held because Petitioner's Medicaid status was deemed inactive. (Manager Eligibility Department Testimony)
4. Petitioner filed a hearing request then submitted a withdrawal of that appeal on or about March 9, 2015. (Exhibit B, p. 12; Manager Eligibility Department Testimony)
5. In December 2015, the Waiver Agency made three attempts to reach Petitioner by phone with no success. (Exhibit C, p. 15)
6. On December 30, 2015, an Advanced Action Notice was issued to Petitioner stating his MI Choice Waiver services case would be terminated effective January 11, 2016, because the Waiver Agency had not been able to reach Petitioner for the monthly contact or to schedule a reassessment. (Exhibit C, pp. 13-14)
7. On January 15, 2016, an Adequate Action Notice and a Closure Letter were issued to Petitioner stating his MI Choice Waiver services case would be terminated effective January 15, 2016, because the Waiver Agency had been unable to reach him by phone or letter. (Exhibit D, pp. 16-17)
8. Petitioner filed a hearing request to contest the closure, then on or about February 26, 2016, submitted a withdrawal of that appeal because his case was being re-opened. (Exhibit E, p. 18; Manager Eligibility Department Testimony)
9. On February 26, 2016, another NFLOCD was completed as part of the re-assessment. Petitioner was found to not meet any of the Doors for the NFLOCD. (Exhibit F, pp. 19-26; Exhibit H, p. 28; Manager Eligibility Department and RN Manager Testimony)
10. On February 29, 2016, a Closure Letter was issued to Petitioner stating his MI Choice Waiver services case would close within 12 days, because he was not eligible for Care Management/Waiver Services. (Exhibit G, p. 27)
11. On April 27, 2016, Petitioner's hearing request was received by the Michigan Administrative Hearing System. (Exhibit I, p. 29)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). 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 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)

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b))

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination (NFLOCD). The NFLOCD consists of seven screening Doors. The doors are: Door 1- Activities of Daily Living; Door 2- Cognitive Performance; Door 3- Physician Involvement; Door 4- Treatments and Conditions; Door 5- Skilled Rehabilitative Therapies; Door 6- Behavioral Challenges; and Door 7- Service Dependency. Annual online NFLOCDs 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 NFLOCD must be conducted reflecting the change in functional status. *Medicaid Provider Manual, MI Choice Waiver Chapter, January 1, 2016, p. 2.*

In order to be found eligible for MI Choice Waiver services, the Petitioner must meet the requirements of at least one Door.

Door 1
Activities of Daily Living (ADLs)

The NFLOCD, pages 1-3 of 9 provides that the Petitioner must:

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

The NFLOCD, pages 3 – 4, provides that to qualify under Door 2 Petitioner must:

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

The NFLOCD, pages 4-5, provides that to qualify under Door 3 Petitioner must:

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**

The NFLOCD, page 5, indicates that in order to qualify under Door 4, the Petitioner must receive, within 14 days of the assessment date, any of the following health treatments or demonstrated any of the following health conditions:

- A. Stage 3-4 pressure sores
- B. Intravenous or parenteral feedings
- C. Intravenous medications
- D. End-stage care
- E. Daily tracheostomy care, daily respiratory care, daily suctioning
- F. Pneumonia within the last 14 days
- G. Daily oxygen therapy
- H. Daily insulin with two order changes in last 14 days
- I. Peritoneal or hemodialysis

Scoring Door 4: The applicant must meet score “yes” in at least one of the nine categories and have a continuing needs to qualify under Door 4.

Door 5 **Skilled Rehabilitation Therapies**

The NFLOCD, pages 5-6, provides that the Applicant must:

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**

The NFLOCD, pages 6-7, provides a listing of behaviors (Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, and Resists Care) and problem conditions (Delusions, and Hallucinations) recognized under Door 6.

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

The NFLOCD, page 7, provides that Petitioner could qualify under Door 7 if there was evidence that he: is currently being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility; for at least one year; requires ongoing services to maintain current functional status; and no other community, residential or informal services are available to meet the Petitioner's needs.

In this case, on February 26, 2016, an NFLOCD was completed as part of Petitioner's re-assessment. Petitioner was found to not meet any of the Doors for the NFLOCD. The Waiver Agency credibly provided testimony explaining their determination for each Door and confirmed that housework services and meals on wheels are available to Petitioner through other resources. (Exhibit F, pp. 19-26; Exhibit H, p. 28; Manager Eligibility Department and RN Manager Testimony)

Petitioner asserted that his situation is the same as it was a year earlier and his condition did not change the whole time. Petitioner was asked about the criteria for each of the seven Doors. Petitioner's credible testimony confirmed that he did not meet the criteria for any of the seven Doors at the time the February 26, 2016, an NFLOCD was completed. Rather, Petitioner indicated he only needed assistance with housework. (Petitioner Testimony)

Accordingly, the evidence established that Petitioner did not meet the criteria for any of the seven Doors at the time the February 26, 2016, an NFLOCD was completed. A need for only housework assistance is not sufficient to meet the NFLOCD criteria. Accordingly, Petitioner was not eligible for the MI Choice Waiver program.


DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Waiver Agency properly terminated the Petitioner's MI Choice Waiver services case because he did not meet the NFLOCD criteria.

IT IS, THEREFORE, ORDERED that:

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

CL/cg



Colleen Lack

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]

Petitioner

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Community Health Rep

[REDACTED]