



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: September 30, 2016
MAHS Docket No.: 16-010417
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 upon the Petitioner's request for a hearing.

After due notice, a hearing was held on September 1, 2016. [REDACTED], daughter and Authorized Hearing Representative (AHR) appeared on behalf of the Petitioner. [REDACTED], the Petitioner, appeared and testified. [REDACTED], Waiver Manager, represented the Department of Health and Human Services' Waiver Agency, The [REDACTED] ("Waiver Agency"). [REDACTED], Registered Nurse (RN) Supports Coordinator, appeared as witnesses for the Waiver Agency.

During the hearing proceedings, the Waiver Agency's Hearing Summary packet was admitted as marked, Exhibits A – D, and Petitioner's Request for Hearing was admitted as Exhibit 1.

ISSUE

Did the Waiver Agency properly determine that Petitioner was no longer eligible for MI Choice Waiver services because the Petitioner did not meet the Nursing Facility Level of Care Determination (LOCD) 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 began receiving services through the MI Choice Waiver program after being discharged from a nursing home on March 17, 2016. (Hearing Summary and RN Supports Coordinator Testimony)

2. For the enrollment determination, it was found that Petitioner met the LOCD criteria on March 17, 2016, via Door 2. (Exhibit D, March 17, 2016, LOCD)
3. On June 21, 2016, another LOCD was completed as part of the three month re-assessment. Petitioner was found to not meet any of the Doors for the LOCD. (Exhibit D, June 21, 2016, LOCD; RN Supports Coordinator Testimony)
4. On June 21, 2016, an Advance Action Notice Termination of Services was issued to Petitioner stating Petitioner no longer qualified for the MI Choice Program services based on the LOCD. Petitioner's services were to terminate 12 days from the date of the notice. (Exhibit C, Advance Action Notice Termination of Services)
5. On June 22, 2016, the RN Supports Coordinator assisted Petitioner in contacting MPRO for an immediate review of her case. (Hearing Summary and RN Supports Coordinator Testimony)
6. On July 5, 2016, MPRO contacted the RN Supports Coordinator stating they agreed that Petitioner does not medically qualify for the MI Choice Waiver Program. (Hearing Summary and RN Supports Coordinator Testimony)
7. On July 7, 2016, MPRO issued an Advance Action Notice to Petitioner. (Exhibit C, MPRO Advance Action Notice)
8. On July 29, 2016, Petitioner filed a Request for Hearing contesting the Waiver Agency's determination¹. (Exhibit 1)

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

¹ Typically one administrative hearing would be held to review both the Wavier Agency and MPRO determinations that led to the termination of MI Choice Waiver services. However, the Waiver Agency indicated that they had not contacted MPRO for this hearing, there was no evidence presented regarding how MPRO made their determination, and Petitioner's AHR testified that she thought she filed separate paperwork to appeal the MPRO determination. Accordingly, this decision will be limited to reviewing solely the Waiver Agency's determination that Petitioner did not meet the LOCD criteria.

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 The Senior Alliance, 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))

Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. In accordance with the federal regulations the Michigan Department of Health and Human Services implemented functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services.

MI Choice applicants are evaluated for functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). The LOCD 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 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. *Medicaid Provider Manual, MI Choice Waiver Chapter, April 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 LOCD, 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 LOCD, pages 3-4 of 9, 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 LOCD, pages 4-5 of 9, 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 LOCD, page 5 of 9, 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 LOCD, pages 5-6 of 9, provides that the Petitioner 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 LOCD, pages 6-7 of 9, 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 LOCD, page 7 of 9, 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 June 21, 2016, an LOCD was completed as part of Petitioner's re-assessment. Petitioner was found to not meet any of the Doors for the LOCD. (Exhibit D, June 21, 2016 LOCD; RN Supports Coordinator Testimony)

Petitioner's ARH testified that she felt Petitioner should still qualify because she cannot do things for herself. The criteria for each Door of the LOCD were reviewed with Petitioner and her AHR.

For Door 1, only four Activities of Daily Living are considered: bed mobility, transfers, toilet use, and eating. Petitioner was scored as independent for all four. (Exhibit D, June 21, 2016 LOCD, pp. 1-3) Petitioner's AHR testified that Petitioner needs assistance with fixing food. (AHR Testimony) Petitioner testified she needs assistance with bathing. (Petitioner Testimony) However, meal preparation and bathing are not activities considered under Door 1. Petitioner's AHR confirmed that Petitioner is independent with bed mobility, transfers, toilet use, and eating. (AHR Testimony) Accordingly Petitioner did not qualify through Door 1 at the time of the June 21, 2016, LOCD.

Regarding Door 2, Petitioner was scored as having a memory problem, modified independent with decision making, and able to make herself understood. (Exhibit D, June 21, 2016 LOCD, pp. 3-4) For this Door, the only disagreement was with Petitioner's ability to make herself understood. Petitioner's AHR testified that Petitioner has some difficulty with expressing herself and indicated scoring as usually understood would be more appropriate. (AHR Testimony) However, even if Petitioner had been scored as usually understood, Petitioner still would not meet the criteria to qualify through Door 2. To qualify under Door 2, Petitioner would have to score under one of three options: (1) "Severely Impaired" in Decision Making; (2) "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired"; or (3) "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood." Accordingly Petitioner did not qualify through Door 2 at the time of the June 21, 2016, LOCD.

Petitioner's AHR indicated the scoring for Doors 3-6 was correct for the June 21, 2016, LOCD. (AHR Testimony)

Regarding Door 7, it was confirmed that Petitioner had not been served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility for at least one consecutive year at the time the June 21, 2016, LOCD was completed. (AHR and RN Supports Coordinator Testimony) The Michigan Department of Health and Human Services *Michigan Medicaid Nursing Facility Level of Care Determination Field Definition Guidelines*, September 2015, p. 16 of 18, confirms that the one year requirement for Door 7 is one consecutive year. Accordingly Petitioner could not qualify through Door 7 at the time of the June 21, 2016, LOCD.

The evidence establishes that Petitioner did not meet the criteria for any of the seven Doors at the time the June 21, 2016, LOCD was completed. Accordingly, Petitioner was no longer eligible for the MI Choice Waiver program based on the June 21, 2016, LOCD completed by the Waiver Agency.

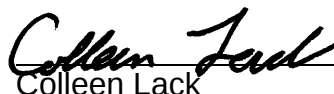
DECISION AND ORDER

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 she did not meet the LOCD criteria.

IT IS THEREFORE ORDERED that

The Waiver Agency's decision is **AFFIRMED**.

CL/sb



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]

Authorized Hearing Rep.

[REDACTED]

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]