[redacted]
MI [redacted]

Date Mailed: August 3, 2021
MOAHR Docket No.: 21-003165
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

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

After due notice, a hearing was held on August 3, 2021. Petitioner appeared on her own behalf and offered testimony. Sheyenne Cole, MI-Choice Waiver Director, appeared on behalf of the Respondent, Senior Resources of Western Michigan (Department).

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly determine Petitioner was not eligible for MI-Choice Waiver Services?

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 does not have Medicaid. (Exhibit A, p 4; Testimony.)

2. On June 8, 2021, the Department conducted a telephone assessment with Petitioner.[1] The assessment consisted of a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). (Exhibit A, pp 4-21, 28-30; Testimony.)

[1] Due to Covid-19, Petitioner's contract was amended to allow for telephonic, telemedicine, and video technology to be utilized in lieu of in-person face-to-face assessments.

3. Based on the LOCD performed, it was determined Petitioner met the LOCD requirements within the fourteen-day look-back period for Door 4 due to Petitioner having pneumonia. The assessment did not indicate Petitioner as having a long-term service need and that Petitioner's need for homecare could be provided by alternative services. (Exhibit A, pp 2, 18, 27; Testimony.)

4. Based on the assessment and findings, the Department made a referral to AASA for bathing and homemaking. (Exhibit A, p 27; Testimony.)

5. On June 9, 2021, the Department sent Petitioner an Adequate Action Notice. The notice indicated Petitioner did not have a medical need for long-term service and that a referral would be made to another program at Senior Resources. (Exhibit A, p 3; Testimony.)

6. On June 14, 2021, the Department spoke with a Department of Health and Human Services (DHHS) Adult Protective Services (APS) worker. The APS worker indicated Petitioner's immobility seemed to be temporary, and that Petitioner's issue appeared to be getting food and fluids between visits from family. (Exhibit A, p 25; Testimony.)

7. Beginning June 21, 2021, Martell and Co., began providing homemaking services to Petitioner. (Exhibit A, p 25.)

8. On July 7, 2021, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (See Hearing File.)

9. On July 8, 2021, Petitioner requested homemaking services be paused due to health concerns. (Exhibit A, p 24.)

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 was requesting 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.[2]

A waiver under section 1915(c) of the Social Security Act allows a State to include as "medical assistance" under its plan, home and community-based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF (Skilled Nursing Facility), ICF (Intermediate Care Facility), or ICF/MR (Intermediate Care Facility/Mentally Retarded) and is reimbursable under the State Plan.[3]

Types of services that may be offered through the waiver program include:

> Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:
>
> (1) Case management services.
>
> (2) Homemaker services.
>
> (3) Home health aide services.
>
> (4) Personal care services.
>
> (5) Adult day health services
>
> (6) Habilitation services.
>
> (7) Respite care services.
>
> (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

[2] *42 CFR 430.25(b)*
[3] See *42 CFR 430.25(c)(2)*

(9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.[4]

The Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, with respect to eligibility, the applicable version of the MPM states in part:

SECTION 2 – ELIGIBILITY

The MI Choice program is available to persons 18 years of age or older who meet each of three eligibility criteria:

- An applicant must establish their financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.

- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).

- It must be established that the applicant requires at least two waiver services, one of which must be Supports Coordination, and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met in order to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program.

* * *

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 MDHHS policy and put in the online LOCD application within 14 calendar days after the date of enrollment into the MI Choice

[4] *42 CFR 440.180(b)*

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 MILogin in CHAMPS. (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.

Copies of the LOCD for participants must be retained by the waiver agency for a minimum period of six years. This information is also retained in the MDHHS LOCD database. For individuals who do not meet the LOCD criteria, a paper copy of the LOCD must be retained in the applicant's record for no less than three years.[5]

To remain eligible for MI Choice waiver services, Petitioner must therefore have met the requirements of at least one door on the LOCD that Respondent conducted pursuant to the above policy:

Door 1

[5] *MPM*, MI Choice Waiver Chapter, July 1, 2019, pp 1-3.

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, demonstrate service dependency, and meet all three criteria [Participant for at least one consecutive year (no break in coverage); Requires ongoing services to maintain current functional status; No other community, residential or informal services are available to meet the applicant's needs (i.e., only the current setting can provide service needs)] under Door 7.

Here, the Department determined that Petitioner passed through Door 4, but that Petitioner did not have a long-term service need and that the services needed could be provided through another agency/service. In this case, the Petitioner required homemaking services and that those services could be provided through another program offered by Senior Resources.

Petitioner disputed the denial and indicated she required care but did not identify a service need that could not or would not be provided by the alternative program. Petitioner did indicate she was not receiving services, but the logs provided indicated Petitioner had made requests to pause service.

As indicated during the hearing, the policy looks at the 7 and 14 days prior to the assessment to determine eligibility and need. In this case, the evidence indicates the Department assessed the Petitioner appropriately and that the conclusions reached by the Department are supported by the information contained in the assessment. As a result, the Department's notice should be affirmed. If Petitioner's condition or needs change, the Petitioner can always submit a new request for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Department properly found Petitioner ineligible for waiver services.

IT IS THEREFORE ORDERED that:

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

CA/dh

Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS Department Rep.	Heather Hill 400 S. Pine 5th Floor Lansing, MI 48933
DHHS -Dept Contact	Brian Barrie CCC 7th Floor Lansing, MI 48919
DHHS -Dept Contact	Elizabeth Gallagher 400 S. Pine 5th Floor Lansing, MI 48909
Petitioner	[redacted] MI [redacted]
Community Health Rep	Sheyenne Cole Senior Resources Region 14 AAA 560 Semoniole Rd. Muskegon, MI 49444