

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

Docket No. 2009-11874 NHE

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. ██████████, Appellant's representative, appeared and testified on behalf of Appellant. ██████████; and ██████████, testified as witnesses for the Appellant. ██████████ from ██████████, represented the Department's waiver agency.

ISSUE

Did the Department ██████████ properly determine that Appellant did not qualify for Nursing Facility Level of Care (NFLC) 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. The Appellant is an ██████-year-old woman who was residing at the ██████████ at all times relevant to this matter, in private pay status.
2. Appellant was transferred to a nursing facility after fracturing her shoulder while living independently in her apartment in ██████████. (Exhibit 4)
3. On ██████████, a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) was conducted by ██████████, the ██████████ Options

Counselor (OC), to determine if Appellant met the criteria for Medicaid nursing facility coverage. (Exhibit 1)

4. On ██████████, the OC determined that Appellant did not meet the nursing facility eligibility criteria for Doors 1 through 7 and provided Appellant with an Adequate Action Notice of the determination. (Exhibit 1-3)
5. On ██████████, the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the nursing facility LOCD completed on ██████████

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 (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.

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. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

The Medicaid Provider Manual (MPM), Nursing Facilities Coverage's Section, January 1, 2007, lists the policy for admission and continued eligibility process, as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MIChoice, and PACE services. (D Exhibit I)

Section 4.1.D. of the Medicaid Provider Manual Nursing Facilities Coverage's Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool. The LOCD is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. All Medicaid beneficiaries who reside in a nursing facility are required to meet the functional and medical eligibility criteria on an ongoing basis.

MPM, Nursing Facility Coverage's, January 1, 2007, page 9.

Nursing facilities, MIChoice, and PACE, have multiple components for determining eligibility for services. The Medicaid Provider Manual Nursing Facilities Section, and the Nursing Facility Eligibility and Admission Process, November 1, 2004, Pages 1-7 explain the components that comprise the eligibility and admission process for nursing facility eligibility and admission. The LOCD is the assessment tool to be utilized when determining eligibility for admission and continued Medicaid nursing facility coverage.

There are five necessary components for determining eligibility for Medicaid nursing facility reimbursement.

- Verification of Medicaid Eligibility
- Correct/timely Pre-Admission Screening/Annual Resident Review (PASARR)
- Physician Order for Nursing Facility Services
- Appropriate Placement based on Medicaid Nursing Facility Level of Care Determination
- Freedom of Choice

See MDCH Nursing Facility Eligibility and Admission Process, Page 1 of 7, 11/01/04.

Appellant has been a resident of a nursing facility at all times relevant to this matter. Appellant has been in private pay status at the facility since she was admitted after fracturing her shoulder while living in an apartment, independently. On ██████████, a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) was conducted by ██████████, the OC, to determine whether Appellant met criteria for Medicaid nursing facility coverage. The Department provided evidence that the Michigan Medicaid Nursing Facility LOCD demonstrated that the Appellant did not meet the criteria. (Exhibit 1)

The Level of Care Assessment Tool consists of seven service entry Doors. The doors are: Activities of Daily Living, Cognition Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, and Service Dependency. In order to be found eligible for Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door. The Medicaid Provider Manual explicitly states that a nursing home resident must meet the Level of Care (LOC) criteria on an ongoing basis. (MPM, Nursing Facility Coverages, October 1, 2007)

The Appellant bears the burden of proving, by a preponderance of evidence, that she met the LOC criteria within the last 7 days prior to the assessment completed on ██████████. The reasons Appellant did not meet the criteria are listed per door below:

Door 1

Activities of Daily Living (ADLs)

The Department witness ██████████, the OC who conducted the LOCD, testified that after an observation of Appellant, reading Appellant's chart, and interviewing Appellant, an aide, and a nurse at the facility, she concluded that Appellant was independent in bed mobility, transferring, toilet use, and eating. Appellant must score at least six points to qualify under Door I. (See Michigan Medicaid Nursing Facility Level of Care form, page 3 of 9)

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

The Appellant scored independent in the four areas of LOC ADLs and her point total was less than 6 points. (Exhibit 1) ██████████ established that she followed the Michigan Medicaid Nursing Facility LOCD guidelines in determining whether Appellant met the nursing facility eligibility criteria under Door 1. Therefore, this Administrative Law Judge finds that the Department properly concluded that the Appellant does not qualify under Door 1.

Door 2 Cognitive Performance

The Department provided documentary evidence that with regard to Cognitive Performance: Appellant's memory was okay; Appellant scored modified independent in cognitive skills for daily decision-making; and Appellant was able to make herself understood. (See Michigan Medicaid Nursing Facility Level of Care form, pages 3-4 of 9)

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."

The preponderance of evidence fails to establish that Appellant met the above criteria. Therefore, the Department properly determined that the Appellant did not qualify under Door 2.

Door 3
Physician Involvement

The Department provided documentary evidence that the Appellant had no physician visits and 2 physician order changes within 14 days prior to the assessment. In order to qualify under Door 3, Appellant had to meet either of the following:

1. At least one Physician Visit exam AND at least four Physician Order changes in the last 14 days, OR
2. At least two Physicians Visit exams AND at least two Physicians Order changes in the last 14 days.

The preponderance of evidence fails to establish that Appellant met the above criteria. Therefore, the Department properly determined that the Appellant did not qualify under Door 3.

Door 4
Treatments and Conditions

In order to qualify under Door 4, the Appellant had to 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

The Department provided documentary evidence that the Appellant did not receive treatment for nor demonstrate any of the health conditions required to qualify under Door 4 within 14 days of the assessment date. Accordingly, the Department properly determined that Appellant did not qualify under Door 4.

Door 5
Skilled Rehabilitation Therapies

In order to qualify under Door 5, an applicant had to have medical documentation of receiving Speech, Occupational or Physical Therapy within seven days of the assessment. The applicant was required to:

...[H]ave 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

The Department provided documentary evidence that the Appellant had not received any Skilled Rehabilitation Therapy within 7 days of the date of the assessment. Therefore, the Department properly determined that the Appellant did not qualify under Door 5.

Door 6
Behavior

An applicant may qualify under Door 6 if the applicant displayed certain behaviors during the seven days before the assessment. LOCD tool, page 6, provides a listing of behaviors recognized under Door 6. (Exhibit 1) The Department provided evidence that the Appellant did not exhibit any of the following behavior symptoms during the 7 days before the assessment: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, or Resists Care. Additionally, the evidence on the record establishes that Appellant did not exhibit any of the following Problem Conditions during the 7 days before the assessment: Delusions and Hallucinations. In order to qualify under Door 6, Appellant had a score under the following two options:

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.

The Department established that Appellant did not qualify under Door 6 as she did not score under either of the two possible categories.

Door 7
Service Dependency

In order to qualify under Door 7, a client must have been in a nursing facility for at least one year and require on-going services to maintain his/her current functional status.

