

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2009-13191 PCE

██████████,

Appellant

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 Appellant's behalf. ██████████ (Appellant) appeared at the hearing. ██████████ for the ██████████, represented the Department. ██████████, testified as witnesses for the Respondent.

ISSUE

Did the Department properly determine that the Appellant does not require a Nursing Facility Level of Care?

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 Medicaid beneficiary who is enrolled in the Department of Community Health's Program for All Inclusive Care for the Elderly (PACE).
2. The ██████████ is a managed care program under contract with the Department of Community Health (Department).
3. On or about ██████████, the PACE Treatment Team completed a 6-month services plan assessment and review, which included a review of Appellant's eligibility for continued enrollment with the PACE program.

4. After the services plan assessment and review, the PACE Treatment Team concluded that the Appellant did not require a Nursing facility level of care and did not meet the policy requirements for an exception.
5. On or about [REDACTED], notice of the PACE ineligibility determination at review was sent to Appellant and his representative.
6. Appellant received notice which informed him that his participation in the PACE program would be terminated effective [REDACTED], because he no longer required a nursing facility level of care.
7. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's request for an administrative hearing.

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 (Department) 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, Coverages and Limitations Chapter, Nursing Facilities Section, April 1, 2005, 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.

Section 4.1 of the Medicaid Provider Manual Nursing Facilities Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool (*Michigan Medicaid Nursing Facility Level of Care Determination, March 7, 2005, Pages 1-9 or [LOC]*). The LOC must be completed 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 on November 1, 2004, must undergo the evaluation process by their next annual MDS assessment date.

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 LOC 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.

For participants enrolled in PACE on [REDACTED], the Michigan Medicaid Nursing Facility Level of Care Determination must be applied for no earlier than the next anniversary date of their enrollment into the program. All participants enrolled prior to [REDACTED], must be evaluated no later than [REDACTED]. Continuing participants who are assessed at their next anniversary date, and who qualify under Door 7 only, must be offered the opportunity and assistance to transition to other community programs, but cannot be required to do so. In applying the criteria for Door 7, it is assumed that current services provided to participants are necessary to maintain function.

Nursing facilities, MIChoice, and PACE have multiple components for determining eligibility for services. The Medicaid Provider Manual, PACE Section 3.2 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 PACE eligibility and admission. The LOC is the assessment tool to be utilized when determining eligibility for admission and continued Medicaid PACE coverage.

To be eligible for PACE enrollment or continued enrollment, applicants or participants must meet the following requirements:

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Human Services for all counties except Wayne. Determinations for Wayne County will be made by MDCH.)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.

- Receive a comprehensive assessment of participant needs by an interdisciplinary team.
- Be appropriate for placement in PACE based on completion of the Michigan Medicaid Nursing Facility Level of Care Determination.
- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.
- Not concurrently enrolled in the MI Choice program.
- Not concurrently enrolled in an HMO.

Medicaid provider Manual, PACE, Section 3.1 ELIGIBILITY REQUIREMENTS, p 3.

In this case, the Appellant's PACE treatment team completed a service assessment and review. During this process, the treatment team considered the Appellant's continued eligibility for the PACE program. The team applied the Nursing Facility Level of Care (LOC) Assessment and determined that the Appellant did not meet the requirements of any assessment tool door. Also, the Team considered the Department Nursing facility exceptions requirements and found that the Appellant did not meet the exception criteria. The Department Representative and witnesses from the Center for Senior Independence testified for the PACE program and confirmed that the Appellant's PACE treatment team applied and considered the Nursing Facility LOC and found that the Appellant did not meet the requirements for any of the assessment tool's seven doors. The Level of Care Assessment Tool consists of seven service entry doors. These doors are: Activities of Daily Living, Cognition, 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.

Door 1
Activities of Daily Living (ADLs)

The LOC, page 1 of 9 provides that the Appellant must score at least six points to qualify under Door 1.

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 Department's witnesses testified that PACE found that the Appellant was independent in Bed Mobility, Transferring, Toileting, and Eating. The evidence presented shows that the Appellant did not score six points or more under Door 1. Further, there was no evidence to support a finding that Appellant's medical needs are such that he should have scored six points or more. Therefore, Appellant does not meet the requirements under Door 1.

Door 2
Cognitive Performance

The LOC, pages 3-4, provides that to qualify under Door 2 an Appellant 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."

The Department witnesses testified that the PACE Treatment team found that the Appellant did not score in any of the Door 2 areas. They team found that Appellant's memory was okay; Appellant had "Modified Independent" cognitive skills for daily decision-making; and Appellant was able to make himself understood. The evidence on the record fails to establish that Appellant meets the requirements of one or more of the options under Door 2.

Door 3
Physician Involvement

The LOC indicates that to qualify under Door 3, the Appellant must:

...[M]eet either of the following to qualify under

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

The Department's witnesses testified that the PACE Treatment team found that the Appellant's medical condition did not meet either of the Door 3 options, and the evidence on the record fails to establish that Appellant meets the requirements of Door 3.

Door 4
Treatments and Conditions

The LOC, pages 5 & 6, indicate that in order to qualify under Door 4, the Appellant 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

The Department's witnesses testified that the medical records reviewed by the PACE team show that the Appellant does not demonstrate any of the Door 4 physical conditions or treatments. Further, there was no evidence on the record to establish that Appellant meets the requirements of Door 4.

Door 5
Skilled Rehabilitation Therapies

The LOC, pages 5 & 6, provide that the Applicant must:

...[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's witnesses provided evidence which establishes that the PACE treatment team reviewed the Appellant's medical records and found no documentation that the Appellant has received and continued to receive skilled rehabilitation therapies through the PACE program. Further, the Appellant's representative failed to provide evidence to establish that Appellant meets the requirements of Door 5.

Door 6
Behavior

The LOC, page 6, provides a listing of behaviors recognized under Door 6: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, and Resists Care.

The LOC, page 7, provides that the Appellant would qualify under Door 6 if the 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's witnesses testified that the PACE treatment team found that the Appellant does not exhibit any of the Door 5 behaviors, and there was no evidence to establish that Appellant meets the requirements of Door 6.

Door 7
Service Dependency

The Appellant could qualify under Door 7 if there was evidence that he has been served by PACE program for one year or more, and he requires ongoing services to maintain his current functional status. According to the Department Representative and witnesses, and the evidence on the record, Appellant was admitted to the PACE program over one year ago. However, he no longer requires on going services to maintain his functional status. There was no evidence provided to establish that Appellant meets the requirements under Door 7.

Appellant daughter/representative testified that Appellant participates in the PACE program with his wife and has been doing so for the past two years. She believes that Appellant's mental stability would deteriorate if he became separated form his wife of ██████████ years. Appellant's daughter stated that it is detrimental to Appellant's emotional and mental stability that he retains socialization outside of his home in a setting that allows him access to his wife throughout the day. She testified at the hearing that Appellant needs to have involvement with his wife who is in a nursing facility. However, this Administrative Law Judge must uphold the Department's eligibility determination. Appellant's representative failed to provide the necessary evidence to establish that Appellant qualifies for PACE program services or meets the requirements of the nursing facility level of care exceptions criteria.

[REDACTED]
Docket No. 2009-13191
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department correctly determined that the Appellant does not require a Medicaid Nursing Facility Level of Care and acted properly in terminating Appellant's PACE services.

IT IS THEREFORE ORDERED that:

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

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5/4/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.