

**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. 2009-23210 EDW

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 et seq. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared without representation. She had no witnesses. ██████████ represented the Department's waiver agency. She had no witnesses.

ISSUE

Did the Department properly determine that it could not assess the Appellant for the ██████████ program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On ██████████, the Appellant was assessed via home visit. Department's Exhibit A, p. 2.
2. The Appellant was found to not qualify under any of (7) seven mandatory service domains. Department's Exhibit A, pp. 2, 3.
3. The Appellant was not placed on the waiting list, but accepted information relative to alternative volunteer shopping program at the ██████████. Department's Exhibit A, pp. 1, 5.
4. On ██████████, the Appellant was advised of the denial via adequate action notice and was provided with information explaining her further appeal rights. Department's Exhibit A, p. 3.

5. The instant request for hearing was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████. Appellant's Exhibit #1.

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 (NF), 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/Coverages lists the policy for NF admission and the continued eligibility process as well as outlines functional/medical criteria requirements for Medicaid-reimbursement of NF, MI Choice, and PACE services.

At section 4.1 the manual references the use of the web-based Michigan Medicaid Nursing Facility Level of Care Determination tool or the Nursing Facility LOC Exception Process criteria. The LOC determination must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE.

Nursing Facilities, MI Choice, and PACE have multiple components for determining eligibility for services. The MPM explains the components that comprise the eligibility and admission process for nursing facility eligibility and admission.

There are five (5) necessary components for determining eligibility for Medicaid nursing facility reimbursement:

- Verification of financial Medicaid eligibility
- PASARR Level I screening
- Physician-written order for nursing facility services
- A determination of medical/functional eligibility via the Michigan Medicaid Nursing Facility Level of Care Determination
- Computer-generated Freedom of Choice form

MPM, §4.1 et seq Nursing Facility, July 1, 2009, pp. 6-14¹

¹ While this section of the MPM has changed significantly post appeal, the eligibility criteria referenced above are substantially similar to those in effect at the time of in home assessment.

The Level of Care Assessment Tool consists of seven-service entry Doors or domains. The doors are: Activities of Daily Living, Cognition, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependency. In order to be found eligible for placement in either a Medicaid-reimbursed Nursing Facility or for the ██████████ program, the Appellant must meet the requirements of at least one Door.

Door 1
Activities of Daily Living (ADLs)

In the last 7 days, has the applicant needed hands-on assistance in moving around in bed, transferring from bed to chair or wheelchair, or standing, toileting or eating?

The ██████████, in home assessment verified that the Appellant did not meet eligibility criteria under Door 1.

Door 2
Cognitive Performance

In the last 7 days, has the applicant had any difficulty remembering things significant to daily life, or difficulty remembering to take scheduled medications?

The ██████████, in home assessment verified that the Appellant did not meet eligibility criteria under Door 2.

Door 3
Physician Involvement

In the last 14 days, has the applicant been examined by a physician, practitioner or authorized assistant which resulted in at least 1 physician visit and 4 physician order changes, or 2 physician visits and at least 2 physician order changes? (This does not include a routine health maintenance visit.)

The ██████████, in home assessment verified that the Appellant did not meet eligibility criteria under Door 3.

Door 4
Treatments and Conditions

The LOCD Telephone Intake Guideline indicates that in order to qualify under Door 4 the Appellant must receive, within 14 days of the telephone 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-of-life care (life expectancy less than 6 months)
- E. Daily tracheostomy care, daily respiratory care, daily suctioning
- F. Pneumonia within the last 14 days
- G. Daily oxygen therapy
- H. Diabetes (2 insulin order changes in last 14 days)
- I. Peritoneal or hemodialysis

The ██████████, in home assessment verified that the Appellant did not meet eligibility criteria under Door 4.

Door 5
Skilled Rehabilitation Therapies

The LOCD Telephone Intake Guideline inquire if the applicant has been scheduled to receive or is receiving Speech, Occupational or Physical therapy AND continues to require skilled rehabilitation therapy?

The ██████████, in home assessment verified that the Appellant did not meet eligibility criteria under Door 5.

Door 6
Behavior

The LOCD Telephone Intake Guideline inquire if the applicant had any of the (below listed) behaviors in the last 7 days?

Wandering,
Verbally Abusive,
Physically Abusive,
Socially Inappropriate,
Resists Care,
Hallucinations,
Delusions.

The ██████████, in home assessment verified that the Appellant did not meet eligibility criteria under Door 6.

Door 7
Service Dependency

It was noted at hearing that the Appellant moves slowly, but without assistive device

while in her apartment on in home assessment.

* * *

The Appellant testified that her in home assessment team did not properly assess her or fully appreciate her medical plight. She said that as one afflicted with Lupus she has good days and bad days - and that the ██████ assessment team² neglected to take that factor into consideration on in home assessment.

At hearing the Appellant acknowledged that her condition has worsened since her in home assessment date, but she admitted that she has not contacted the agency for reassessment. She was provided with the agency telephone number at hearing.

The Waiver agency representative testified that the Appellant was assessed and did not meet the functional/medical eligibility criteria for Medicaid NF LOC [above]. She added that the Appellant was not placed on the waiting list owing to her failure to qualify through any of the above referenced service doors. The Appellant was provided with ██████ volunteer services information.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department has properly determined the Appellant does not meet the NF LOC and is therefore ineligible for ██████ services at this time.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

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² The assessment team consisted of the Agency representative, above, ██████ and ██████
██████████.

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Date Mailed: 7/29/2009

***** 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.