STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2009-37313 NHE

[redacted],

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 [redacted]. [redacted] represented the Appellant; also in attendance was [redacted]. [redacted], director of LTC programs, represented the Respondent. Her witnesses were, [redacted] MDS coordinator, [redacted] administrator and [redacted] Also in attendance [redacted]

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 [redacted] Medicaid beneficiary and resident of [redacted] since [redacted] (Appellant's Exhibit 2)

2. The Appellant was admitted to the nursing home and assessed under door one as requiring limited assistance as of [redacted]. (Department's Exhibit A)

3. On [redacted], the Appellant was assessed again under the NF LOC evaluation tool and was found to be independent at all stages, doors 1 – 7. (Department's Exhibit B)

4. The Department then determined, on review of the LOC evaluation, that the Appellant did not meet eligibility criteria for Medicaid reimbursed residence at the nursing center.

5. The Appellant was advised of the Department's action on [redacted]. (Department's Exhibit A)

6. The instant appeal was received by SOAHR on [redacted].

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, 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.

The Level of Care Assessment Tool consists of seven-service entry Doors. 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 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 3 of 9 provides that the Appellant must score at least six points to qualify under Door I.

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 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."

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 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 LOC, page 5, indicates 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

Door 5
Skilled Rehabilitation Therapies

The LOC, page 6, provides 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

Door 6
Behavior

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

The LOC, page 8, provides that the Appellant would qualify under Door 6 if the Appellant had a score under one 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.

Door 7
Service Dependency

The Appellant could qualify under Door 7 if there was evidence that [he/she] is currently being served in a nursing facility (and for at least one year) or by the MIChoice or PACE program, and required ongoing services to maintain her current functional status.

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In this case, the Department representative, Aasted, questioned the NF MDS coordinator [on direct] concerning her preparation of the NF LOC assessment conducted on [redacted].

That testimony clearly revealed that the NF had erred in its conclusion that the Appellant did not pass through door 7 – Service Dependency. Accordingly, [redacted], on the record, immediately withdrew the Department's stated position that the Appellant no longer met the NF LOC criteria.

The MDS coordinator acknowledged that the Appellant was seeing a psychiatrist, had confusion and would decline rapidly in the community if released from the NF.

However, the Appellant did not withdraw her petition.

Based on the questioning posed by [redacted], the answers of the MDS coordinator and the Department's acknowledgement of error at Door 7, the ALJ finds that the Appellant continues to meet Medicaid policy by way of continued eligibility through the second NF LOC evaluation tool.

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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department incorrectly determined that the Appellant does not require a Medicaid Nursing Facility Level of Care.

IT IS THEREFORE ORDERED that:

The Department's decision is Reversed.

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

cc: [redacted]

Date Mailed: 12/9/2009

***** 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.