

**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. 2009-16004 EDW

██████████,

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 ██████████. ██████████, ██████████, represented Appellant. ██████████, Appellant's daughter appeared and testified as a witness for Appellant. ██████████, ██████████, represented the Department's waiver agency, ██████████. ██████████, ██████████, testified as a witness for the waiver agency.

ISSUE

Did ██████████ properly determine that Appellant no longer met the Nursing Facility Level of Care criteria effective ██████████?

FINDINGS OF FACT

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

1. Appellant is an ██████████ male with a history of advanced neurofibromatosis and chronic pain.
2. Appellant was a resident of a nursing home at all times relevant to this matter.
3. Appellant became a nursing home resident on ██████████.
4. Appellant was seen by the Alzheimer's Disease and Memory Disorders Program interdisciplinary team at ██████████ on ██████████, for an evaluation of his memory loss. (Exhibit D)

5. On ██████████, Appellant scored a 24 out of 30 points on the Mini-Mental State Examination, and he was diagnosed with dementia with a vascular etiology. (Exhibit D)
6. Appellant was seen again by a doctor who is a member of the Alzheimer's Disease and Memory Disorders Program interdisciplinary team at ██████████ ██████████ on ██████████, for a follow-up of his memory disorder. (Exhibit E)
7. On ██████████, Appellant scored 17 out of 30 points on the Mini-Mental State Examination, and he was diagnosed with dementia with Parkinsonism. (Exhibit E)
8. The waiver agency is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for determining clients' eligibility for Nursing Facility Level of Care services.
9. On ██████████, the waiver agency completed an assessment, using the approved MDCH Level of Care Determination Tool, for the purpose of determining Appellant's continued eligibility for the MI Choice Waiver program. (Agency Exhibit 2).
10. On ██████████, the waiver agency determined that Appellant does not meet the functional/medical eligibility criteria for Medicaid Nursing Facility Level of Care services because the Level of Care Assessment Tool indicated that he did not need a Nursing Facility Level of Care (Exhibit B).
11. On ██████████, the waiver agency sent Appellant written notice that he did not qualify for Nursing Facility Level of Care services. (Exhibit B)
12. On ██████████, the waiver agency completed a re-assessment, using the approved MDCH Level of Care Determination Tool, for the purpose of determining whether Appellant required a Nursing Facility Level of Care.
13. On ██████████, the waiver agency determined that Appellant meets the criteria for a Nursing Facility Level of Care based on his score under Door 1-Activities of Daily Living on the Level of Care Assessment Tool. (Exhibit C-13)
14. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's request for an administrative hearing, protesting the waiver agency's ██████████ decision.

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 ██████████, 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, ██████████, lists the policy for admission and continued eligibility process as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MI Choice, 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, 2006, 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.

The Level of Care Assessment Tool consists of seven service entry Doors. (Exhibit 2). The doors are: Activities of Daily Living (ADLs), Cognitive 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.

Door 1
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

In order to qualify under Door 2:

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 Michigan Medicaid Nursing Facility Level of Care Determination tool indicates that to qualify under Door 3, the Appellant must have 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 Physician Visit exams AND at least two Physician Order changes in the last 14 days.

Door 4
Treatments and Conditions

The Michigan Medicaid Nursing Facility Level of Care Determination tool 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 Michigan Medicaid Nursing Facility Level of Care Determination tool indicates that to qualify under Door 5, the Applicant must:

Have required at least 45 minutes of active Speech Therapy, Occupational Therapy or Physical Therapy (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5.

Door 6
Behavior

The Michigan Medicaid Nursing Facility Level of Care Determination tool indicates that in order to qualify under Door 6, Appellant had to score under the following two (2) 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 Michigan Medicaid Nursing Facility Level of Care Determination tool indicates that to qualify under Door 7, there must be evidence that the Applicant is currently being served in a nursing facility (and for at least one year) or by the MI Choice or PACE program, and requires ongoing services to maintain her current functional status.

Appellant disputes the determination that he did not the meet a Nursing Facility Level of Care effective ██████████, under Door 2. ██████████, the ██████████ who completed the Nursing Facility Level of Care assessment, determined that with regard to Cognitive Performance, Appellant was independent in his cognitive ability for daily decision-making; his short-term memory was okay; and he was able to make himself understood. On ██████████, approximately two weeks later, ██████████ completed another assessment of Appellant and determined that **he did meet** the Nursing Facility Level of Care criteria, under Door 1-Activities of Daily Living.

Appellant had the burden of establishing by a preponderance of evidence that he met the Nursing Facility Level of Care criteria. At the same time, the Department's waiver agency had the burden of going forward and establishing that it properly assessed Appellant under the Nursing Facility Level of Care criteria. In this case, the Department's waiver agency failed to meet its burden of proof. The evidence fails to establish that an accurate assessment of Appellant's cognitive skills for daily decision making under Door 2 was completed. Under Door 2, the applicant's ability to remember, think coherently, organize daily self-care activities, remember recent events, and perform key decision-making skills must be assessed. ██████████ testified that Appellant was not open to talk to her during her interview of him, and he gave only "one-word" "simple" answers to her questions. ██████████ testified that it was very difficult to get information from Appellant so she relied on the information that she obtained from Appellant's chart and the nursing facility staff that saw Appellant on a daily basis. According to the Michigan Medicaid Nursing Facility Level of Care Determination Field Definition Guidelines, p. 7, the person conducting the assessment must be able to clarify or validate information regarding the applicant's cognitive function over the last 7 days in order to assess Appellant under Door 2. The person completing the assessment is able to obtain information from family or specific caregivers, as appropriate, to clarify or validate information regarding the applicant's cognitive function over the last 7 days if the applicant is unable or unwilling to verbally communicate. However, ██████████ failed to provide clear, detailed, consistent testimony about the specific questions asked of each staff member that she interviewed, and the specific information that she was able to obtain from each of them. Further, the Department's waiver agency failed to provide evidence of nurse's notes or other documentation of Appellant's ability to: remember recent events; make every day decisions about activities of daily living; and express or communicate requests, needs, opinions, urgent problems, and social conversation during the 7-day look-back period.

Appellant's ██████████ testified credibly about her father's memory problems, and his inability to function, independently, in his home. According to the Field Definition Guidelines, "for applicants with limited communication skills or who are best understood by family or specific caregivers, you would need to carefully consider family insights in this area." There is no evidence to establish that at the time of the ██████████ assessment, the Department's waiver agency made any attempt to contact Appellant's ██████████ to gain further insight into Appellant's cognitive function.

This Administrative Law Judge gave controlling weight to the credible, material, and substantial evidence provided by Appellant. Appellant's witness testified credibly about Appellant's memory problems and his inability to live in his home, independently, due to his cognitive problems. Appellant is an ██████████ old man who was diagnosed with dementia in ██████████, after being seen by the Alzheimer's Disease and Memory Disorders Program interdisciplinary team due to his memory loss. Dementia (means "deprived of mind") is the progressive decline in cognitive function due to damage or disease in the body beyond what might be expected from normal aging; and it is

progressive deterioration in intellectual function and other cognitive skills, leading to a decline in the ability to perform activities of daily living. The prevalence of dementia doubles every 5 yrs after age 60 until about age 90. (See Merck Manual of Geriatrics) Appellant provided objective medical evidence which corroborates the testimony of his witness. Just prior to be admitted to the nursing home, a qualified medical source saw Appellant for a follow-up of his memory disorder and administered the Mini-Mental State Examination. The **Mini-Mental State Examination (MMSE)** or **Folstein test** is a brief 30-point questionnaire test that is used to screen for a cognitive impairment. The total number of points for a perfect score is 30. In [REDACTED], just prior to being admitted to the nursing facility, Appellant's MMSE score was 17, which suggests a moderate cognitive impairment. Appellant provided objective medical evidence to establish that his cognition declined significantly in one year.

In conclusion, the evidence provided by the Department's waiver agency is insufficient to support the conclusion that Appellant had no memory problems, and he was independent in his cognitive skills for daily decision-making during the look-back period of the [REDACTED] Nursing Facility Level of Care assessment. Therefore, the eligibility determination cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that [REDACTED] failed to establish that Appellant no longer met the Nursing Facility Level of Care criteria effective [REDACTED]
[REDACTED]

IT IS THEREFORE ORDERED that

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

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

cc:

[REDACTED]

[REDACTED]
Docket No. 2009-16004 EDW
Decision and Order

[REDACTED]
Date Mailed: 6/5/2009

***** 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.