

**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:

██████████

Appellant

_____ /

Docket No. 2009-34039 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 ██████████. ██████████
██████████ represented the Appellant. The Appellant was not present.

██████████, represented the Department.
██████████; and
██████████, appeared as witnesses for the Department.

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 a ██████████ Medicaid beneficiary who currently resides in ██████████ skilled nursing facility (██████████ or nursing facility).
2. The Appellant was admitted to the nursing facility prior to ██████████. A Michigan Medicaid Nursing Facility Level of Care Determination was completed in ██████████ and the Appellant was determined to meet criteria for Medicaid

nursing facility coverage. (Department (D) Exhibits A and D).

3. In or around ██████████ Appellant's daughter/representative had discussions with ██████████ social worker and understood that Appellant might no longer meet Medicaid level of care eligibility for nursing facility coverage.
4. Based on that verbal exchange the Appellant's daughter/representative sent a request for hearing which was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████. (D Exhibit A).
5. On ██████████, ██████████ completed an online Michigan Medicaid Nursing Facility Level of Care Determination to determine if the Appellant met criteria for Medicaid nursing facility coverage. (D Exhibit E).
6. ██████████ and ██████████ Level of Care Assessment staff, completed the Michigan Medicaid Nursing Facility Level of Care Determination (LOC) and determined that the Appellant did not meet the nursing facility eligibility criteria for Doors 1 through 7. (D Exhibits E and F).
7. On ██████████, ██████████ requested that the Michigan Peer Review Organization (MPRO) review the ineligibility determination and that the exception process be performed for the Appellant. (D Exhibit F). On ██████████, MPRO completed its review and provided the Appellant written notice that she did not meet the criteria for Doors 1 through 7, nor an exception, and of her right to appeal the determination. (D Exhibits F, H and I).

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, Nursing Facilities Coverages Section, July 1, 2009, 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 J).

Section 4.1 of the Medicaid Provider Manual Nursing Facility Coverages Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool. The LOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. A written form of the LOC, as well as field guidelines are found in the *MDCH Nursing Facility Eligibility Level of Care Determination, Pages 1 - 9, 3/07/05* and *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines, Pages 1 - 19, 3/15/05*. (D Exhibits K and L).

The evidence presented and not disputed by the parties established that the Appellant is a Medicaid beneficiary who was admitted to ██████████ prior to ██████████, had LOC assessments in ██████████ and was found to meet the nursing facility eligibility criteria for LOC Doors 1 through 7. (D Exhibits A and D).

The Department provided evidence that on ██████████, ██████████ completed an online Michigan Medicaid Nursing Facility Level of Care Determination to determine whether the Appellant met criteria for Medicaid nursing facility coverage. (D Exhibits E and F).

The Department provided evidence that the Michigan Medicaid Nursing Facility Level of Care Determination demonstrated that the Appellant did not meet the nursing facility eligibility criteria for Doors 1 through 7. (D Exhibits E and F).

On ██████████, ██████████ requested that the Michigan Peer Review Organization (MPRO) review the ineligibility determination and that the exception process be performed for the Appellant. (D Exhibit F). On ██████████, MPRO completed its review and provided the Appellant written notice that she did not meet the criteria for Doors 1 through 7 and of her right to appeal the determination. (D Exhibits F, H and I).

The Level of Care Assessment Tool consists of seven service entry Doors. (Exhibit K). 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.

The Appellant possesses the burden of proving by a preponderance of evidence that she meets the criteria for at least one of the LOC "Doors" and as such is eligible for Medicaid-funded nursing facility coverage. As such, Appellant bears the burden of proving by a preponderance of evidence that the Appellant did meet the LOC criteria for at least one door on ██████████

Door 1
Activities of Daily Living (ADLs)

The Department testified that with regard to the Appellant's ADLs, the Appellant was independent in Bed Mobility, independent in Transfers, independent in Toileting Use, and

independent in Eating. The documentary and testimony evidence presented supports the Department determination regarding the Appellant's independence with ADLs. (D Exhibits E and F). LOC page 3 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 Appellant scored independent in the four areas of LOC ADLs and her point total was less than 6 points. (D Exhibit E). The Appellant did not meet eligibility through Door 1.

Toileting and Transfers: Appellant's daughter/representative testified that the Appellant tries to be independent and of the ADLs she performs, she does so slowly. The Department is bound by policy. The policy mandates the assessment be based on the ability to perform the activity and the Department is required to follow the mandate. For the same reason, although the Appellant's daughter/representative stated it takes the Appellant a long time to perform her ADLs, the length of time it takes to perform an ADL is not the determining factor. Again, the assessment must be based on the ability to perform the function.

Bed Mobility: There is no dispute that the Appellant can turn from side-to-side in her bed and position her body in her bed.

Eating: Testimony from Appellant's witnesses and ██████████ established that the Appellant eats independently.

The Appellant did not establish by a preponderance of evidence that she was not independent in bed mobility, transfer, toilet use and eating in the seven days before the assessment and therefore the Department correctly concluded that the Appellant does not qualify under Door 1.

Door 2
Cognitive Performance

The Department provided testimony that with regard to Cognitive Performance, the Appellant has some Short-term Memory loss, scored independent in Cognitive Skills, and is

able to make herself Understood. (D Exhibit E). The LOC pages 3-4 of 9 provides that 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."

The Department correctly concluded that the Appellant does not qualify under Door 2.

Door 3 **Physician Involvement**

The Department provided testimony that the Appellant had no physician visits and no physician order changes within 14 days prior to the assessment. (Exhibit E). The LOC indicates that to qualify under Door 3 the Appellant must:

...[M]eet either of the following to qualify under Door 3

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.

The Appellant meeting none of the above criteria, the Department correctly determined that the Appellant did not qualify under Door 3.

Door 4 **Treatments and Conditions**

The Department representative testified that in order for the Appellant to qualify under Door 4, the Appellant must meet the treatment and conditions requirements for Door 4. 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

The Department provided 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. The evidence presented does not support a finding that the Appellant has any qualifying treatment or condition under Door 4.

Door 5 **Skilled Rehabilitation Therapies**

The Department testified that to qualify under Door 5 an applicant had to have medical documentation of receiving Speech, Occupational or Physical Therapy within seven days of assessment. 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

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

Door 6 **Behavior**

The Appellant may qualify under Door 6 if the Appellant displayed certain behaviors during the seven days before the assessment. LOC page 6 provides a listing of behaviors recognized under Door 6. 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, Resists Care. The Department also testified that the Appellant did not exhibit any of the following Problem Conditions during the 7 days before the assessment: Delusions and Hallucinations. LOC page 8 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 testified that the Appellant did not score under either of the two possible categories. The Department witness properly concluded that the Appellant did not qualify under Door 6.

Door 7
Service Dependency

The Department testified that the Appellant could qualify under Door 7 if there was evidence that she has been in a nursing facility for at least one year and required on-going services to maintain her current functional status. The Department testified that the Appellant has not resided in the nursing facility for at least one year. The Appellant is not currently being served by the MI Choice program or the PACE program. Because service dependency was not established, the Appellant did not qualify under Door 7.

Exception Process

[REDACTED] works for an independent review organization, MPRO. [REDACTED] stated when MPRO received the LOC Exception Process request from [REDACTED], who performed the [REDACTED] LOC assessment, the Appellant's ability to perform ADLs, her diagnoses, her medications, and other aspects of her medical record was reviewed to determine whether the Appellant had a history of meeting frailty criteria in the prior six months. [REDACTED] said that the Appellant did not meet the criteria for any of the Doors 1 – 7 of the LOC assessment. (D Exhibit I). [REDACTED] stated that there was no medical documentation for Appellant that constituted a frailty exception. (D Exhibit I).

The Department provided sufficient information to show that the Appellant is not eligible for Medicaid nursing facility services. The Appellant did not show by a preponderance of evidence that she requires a nursing facility level of care. The Appellant does not meet the requirements for any Door on the Medicaid Nursing Facility Level of Care Determination Tool, or an exception. Therefore, she is not eligible for Medicaid nursing facility services.

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.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

[REDACTED]
Docket No. 2009-34039 NHE
Decision and Order

cc:

[REDACTED]

Date Mailed: 11/23/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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.