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. 2010-2230 NHE

,

Appellant
_____________________/

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and MCL 400.37 upon the Appellant's request for a hearing.

After due notice, a hearing was held . , represented the Appellant. for the Appellant was present as a witness on behalf of the Appellant. and were present. represented the Respondent. represented and appeared as a witness on behalf of the Department of Community Health.

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 resident of in .

2. The Appellant was admitted to the facility as a private pay patient in , directly from a hospital.

3. The Appellant is diagnosed with schizophrenia. She is mentally stable and passed a PASSAR screen most recently completed.

4. The Appellant was recently found financially eligible for Medicaid.

5. Following determination of financial eligibility for Medicaid, the Department of Community Health conducted a Level of Care Determination (LOC) for the purpose of determining whether the Appellant satisfied Department criteria for nursing home residency.

6. The Nursing Facility Level of Care Determination was completed on [REDACTED]. The Appellant was determined ineligible.

7. [REDACTED] conducted a review on [REDACTED], and concurred with the LOC completed at [REDACTED].

8. The Appellant was notified on [REDACTED], that she had been determined ineligible.

9. The Appellant, through her guardian, requested an administrative hearing 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, 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, 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. (Exhibit 1, Attachment 1). 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 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 determination is that the Appellant is independent in all areas measured or scored for Door 1. The Appellant's guardian did not assert otherwise at hearing. The Appellant cannot be found eligible by meeting the criteria set forth at 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 parties agree the Appellant's memory is impaired. They further agree that she scores as modified independent. The evidence of scoring was discussed in detail at hearing. This ALJ specifically sought evidence from the Appellant's guardians regarding the score for this Door. It was stated on the record modified independent was correct for the Appellant while she was residing inside of the facility. It was asserted she would not score the same if residing outside of the regulated environment of the nursing facility and that she would deteriorate if made to leave. Specifically, testimony was taken concerning her condition upon entrance in [redacted] and it was further stated she had vastly improved. It is uncontested she takes her own medications now, totaling 11. This ALJ does not have trouble believing the Appellant is more severely impaired when off her medications, however, the Department criteria specifies the look back period is for 7 days. The Department criteria will not consider how her decision making may be impacted once she leaves the facility, only addressing behaviors as documented by the staff at the facility and only for the look back period. This ALJ does not have authority to make policy exceptions or determine the policy unfit to protect vulnerable people in the position of the Appellant. The authority this ALJ has only is whether the Policy was correctly applied and followed, not whether it is good or useful for the purpose intended. The criteria, as set forth by the Department, was not satisfied by the evidence of record, thus the Appellant cannot be found nursing home eligible based upon satisfaction at Door II.

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.

There was no dispute between the parties that the Appellant did not qualify for Medicaid reimbursement by meeting the criteria set forth at Door 3. There is no evidence in the record supporting a finding the Appellant had at least one physician visit exam and at least four physician order changes in the 14 days prior to the LOC determination. Nor was there evidence presented that the Appellant had at least two physician visit exams and at least two physician order changes in the 14 days prior to the LOC assessment date.

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

There is no evidence in the record supporting a finding the Appellant had any of the qualifying conditions listed as criteria for qualification under Door 4. The Appellant's representative did not assert his sister met any of the criteria set forth at this Door.

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.

There is no evidence in the record supporting a finding the Appellant had any of the qualifying conditions listed as criteria for qualification under Door 5. The Appellant's representative did not assert his sister met any of the criteria set forth at this Door.

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 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.

There is no evidence in the record supporting a finding the Appellant had any of the qualifying conditions listed as criteria for qualification under Door 6. The Appellant's representative did not assert his sister met any of the criteria set forth at this Door.

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.

The evidence of record is that the Appellant has been a resident of a nursing facility in excess of 1 year. Additionally, she is reliant upon the routine furnished by the facility. This, however, does not establish she passes through Door 7. She must be service dependent **and** there must be a finding that no other community services, residential or informal services are available to meet her needs in order to pass through this qualifying Door. In this case, there is no evidence of record the Appellant's services could not be provided in the community through known programs offered by the Community Mental

Health system or MI Choice Waiver program. While the evidence of record from the Department is not accurate with respect to how long the Appellant had been in the facility, nor did it evaluate which programs best suit her needs prior to hearing, the Department's inaccuracy does not render the Appellant eligible to pass through this Door. The Appellant presented no evidence to establish the known services available in the Community would not meet her needs. This ALJ did specifically consider the evidence presented that she had deteriorated many times in the past, and finds it credible. While concern for the Appellant was generated by the compelling and credible testimony of past failures, that evidence did not establish the programs available now will fail to meet her needs. There is no evidence she has been enrolled in the MI Choice waiver program in the past or that it will not meet her needs. This ALJ also had to consider the Department evidence that the nursing facility is not the appropriate place to manage mental illness. Given the evidence of record is that the Appellant's needs relate to her status as suffering a serious mental illness, there is no evidence upon which a finding could be made that the Appellant had met the qualifying criteria for Door 7 at the time the LOC assessment was completed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department correctly determined that the Appellant did not meet the Medicaid Nursing Facility Level of Care on [redacted].

IT IS THEREFORE ORDERED that:

The Department's decision is UPHELD.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 1/4/2010

***** 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.