STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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. 2011-36908 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 [redacted]. [redacted], Guardian, represented the Appellant. [redacted], Long Term Care Program Policy Analyst, represented the Department. [redacted], RN, PACER Project Manager with MPRO, and [redacted], Coordinator, [redacted], 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 [redacted]-year-old Medicaid beneficiary and resident of Genesys Convalescent Center, a long term care facility.

2. Medicaid policy requires nursing facility residents to meet the medical/functional criteria on an ongoing basis. The Michigan Medicaid Nursing Facility Level of Care Determination (LOC) medical/functional criteria include seven domains of need: Activities of Daily Living, Cognitive Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitation Therapies, Behavior, and Service Dependency. *Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2011, Pages 8-10.*

3. A subsequent LOC must be completed when there has been a significant change in condition that may affect the resident's current medical/functional eligibility status. *Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2011, Page 10.*

4. On [redacted] the Appellant was assessed under the LOC evaluation tool and was found to be ineligible for nursing facility placement based upon failure to qualify via entry through one of the seven doors. (Exhibit B and Hearing Summary)

5. On [redacted] contacted MPRO to request an exception review and MPRO denied eligibility. (Exhibit B and Hearing Summary)

6. On [redacted], the MPRO issued a final denial letter. (Exhibit B, page 3)

7. On [redacted], a Request for Hearing contesting the determination was filed on the Appellant's behalf. On [redacted] the Request for Hearing was resubmitted with documentation of Guardianship. (Exhibit C)

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.

Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. In accordance with the federal regulations the Michigan Department of Community Health (MDCH) implemented functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

Section 5 of the Medicaid Provider Manual, Nursing Facilities Coverages 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. *Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2011 Pages 6-14.*

Section 5.1.D.1 of the Medicaid Provider Manual Nursing Facility Coverages Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination (LOC) tool. *Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2011 Pages 8-10.* The LOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE. A subsequent LOC must be

completed when there has been a significant change in condition that may affect the resident's current medical/functional eligibility status. *Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2011 Page 10.* 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.* (Exhibits D and E)

The LOC 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. (Exhibit D)

In order to be found eligible for Medicaid nursing facility coverage 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

(Exhibit D, pages 1-3)

The Appellant was scored as independent for each of the ADLs considered under Door 1. (Exhibit B, page 2) The Appellant's Guardian testified that he believed this was correct. Accordingly, the Appellant did not score at least six (6) points to qualify through Door 1.

Door 2
Cognitive Performance

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."

(Exhibit D, pages 3-4)

The Appellant was scored as short term memory okay, independence with cognitive skills, and able to make herself understood. (Exhibit B, page 2)

The Appellant's Guardian's testimony addressed the Appellant's judgment and questioned her insight into her care requirements and whether she has a sense of how bad her diabetes is.

However, even if the Appellant had been scored as moderately impaired with cognitive skills for daily decision making, this alone would not have been sufficient to score through Door 2. The scoring requires a severe impairment with cognitive skills for daily decision making or a short term memory problem with moderate impairment or severe impairment in daily decision making. The evidence did not indicate that the Appellant never (or rarely) made decisions, or that she has a short term memory problem. Additionally, no evidence was presented contesting the Appellant's ability to make herself understood. Accordingly, the Appellant did not meet the criteria to qualify through Door 2.

Door 3
Physician Involvement

Scoring Door 3: The applicant must meet 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.

(Exhibit D, pages 4-5)

The Appellant was scored as having no physician visits and two physician order changes. (Exhibit B, page 2) No evidence was presented indicating additional physician's visits or order changes. Accordingly, the Appellant did not meet the criteria to qualify through Door 3.

Door 4
Treatments and Conditions

Scoring Door 4: The applicant must score "yes" in at least one of the nine categories above and have a continuing need to qualify under Door 4.

In order to qualify under Door 4 the applicant 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

(Exhibit D, page 5)

No evidence was presented indicating that the Appellant received any of the specified treatments or demonstrated any of the specified health conditions during the relevant time period to meet the criteria for Door 4.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The applicant must have 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. (Exhibit D, pages 5-6)

No evidence was presented indicating that the Appellant received any skilled therapies during the relevant time period to meet the criteria for Door 5.

Door 6
Behavior

Scoring Door 6: The applicant must score under one of the following 2 options to qualify under Door 6.

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.

(Exhibit D, pages 6-7)

No evidence was presented indicating that the Appellant displayed any of the behavioral symptoms or problem conditions considered to qualify under Door 6.

Door 7
Service Dependency

Scoring Door 7: The applicant must be a current participant and demonstrate service dependency under Door 7.

> The assessment provides that the applicant could qualify under Door 7 if he is currently (and has been a participant for at least one (1) year) being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility, requires ongoing services to maintain current functional status, and no other community, residential, or informal services are available to meet the applicant's needs.
>
> (Exhibit D, page 7)

The Appellant had not been a program participant for at least one year when the [redacted], Michigan Medicaid Level of Care Determination tool was completed. (Exhibit B, page 2) Accordingly she can not qualify through Door 7.

The Appellant did not qualify through any of the seven Doors on the [redacted], Michigan Medicaid Nursing Facility Level of Care Determination Tool. (Exhibit B, page 2) However, an exception review was requested by the nursing facility that same date.

Exception Process

The RN PACER Project Manager with MPRO testified and provided documentation that when MPRO received the LOC Exception Process request from the nursing facility Coordinator, they discussed how the Appellant last met the LOC criteria, when she was admitted to the facility and where she resided prior to admission, the Appellant's ability to perform ADLs, her diagnoses, her medications, her cognitive performance and other aspects of her medical record were reviewed to determine whether the Appellant met the criteria for an exception.

The Michigan Department of Community Health policy related to LOC exception eligibility for nursing facility services is found in its Medicaid Provider Manual:

> **5.1.D.2 Nursing Facility Level Of Care Exception Process**
>
> The Nursing Facility Level of Care (LOC) Exception Review is available for Medicaid financially pending or Medicaid financially eligible beneficiaries who do not meet medical/functional eligibility based on the web-based Michigan Medicaid Nursing Facility LOC Determination criteria, but demonstrate a significant level of long term care need. The Nursing Facility LOC Exception Review process is not available to private pay individuals. The Nursing Facility LOC Exception Review is initiated only when the provider telephones the MDCH designee on the date the online Michigan Medicaid Nursing Facility LOC Determination was conducted and requests the Nursing Facility LOC Exception

> Review on behalf of a medically/functionally ineligible beneficiary. The Nursing Facility LOC Exception Criteria is available on the MDCH website. A beneficiary needs to trigger only one of the LOC Exception criteria to be considered as eligible under the Exception Review.
>
> *Medicaid Provider Manual,*
> *Nursing Facility Coverages,*
> *April 1, 2011 Page 11.*

The RN PACER Project Manager went through each of the exception criteria in detail and testified that the Appellant did not meet any of the exception criteria. (See also Exhibit B, page 3).

The RN PACER Project Manager with MPRO said that the Appellant did not meet the criteria for any of the Doors 1 – 7 of the LOC assessment or an exception, therefore, a final denial letter was issued on [redacted]. (Exhibit B, page 2 and Exhibits D and E)

The Department based its decision on information it had on [redacted], and noted that no medical documentation established that the Appellant met the LOCD or any of the exception criteria ascertained by an independent review organization. Based on medical documentation it had at the time, it is decided that the Department was proper when it found the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care Determination tool and did not meet the exception criteria as of the [redacted], review date. 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 did not meet the criteria for Medicaid Nursing Facility Level of Care.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

[redacted]
Docket No. 2011-36908 NHE
Decision and Order

cc: [redacted]

Date Mailed: 9/20/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.