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. 2012-12508 NHE

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 /guardian represented the Appellant. His witness was . LTC/MSA Hearings Officer represented the Department of Community Health. Her witnesses from Spectrum Health Nursing Facility Rehabilitation- were Social Worker, RN/MDS Coordinator and , ADON.

PRELIMINARY MATTER:

The admission of Appellant's proposed Exhibit 2 was taken under advisement [without objection from the Department] as the Exhibit had not been shared with the Tribunal or the Department representative. To facilitate the proceedings and with the consent of the parties the document was faxed to the Tribunal post-hearing with the proposed medication listing appended thereto.

On receipt the ALJ would determine the ultimate admissibility of the Exhibit – after providing the Department with its copy and an opportunity to comment further. The Exhibit was shared with the Department representative and she declined further comment or action.

The Exhibit, [for purposes of Record No. 1 and Record No. 2 offer of proof] is admitted. However for purposes of LOC determination [LOCD] and assessment the document is afforded little weight on review.

ISSUE

Did the Department properly determine that the Appellant does not require a Medicaid reimbursable 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 year-old Medicaid beneficiary and current resident of Spectrum Rehabilitation Nursing Facility (NF)-4. He was admitted on . (*See* Testimony of Michelle Karlander, RN)

2. The Appellant was admitted to the NF owing to the need for recuperation following serious ankle surgery. He was assessed under the NF LOCD on and found to require continued NF placement under Door 3 – Physician Involvement. (Department's Exhibit A, pp. 1, 7, 13 -14)

3. On 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 A - throughout)

4. The Department determined, on review of the LOCD evaluation, that the Appellant no longer met eligibility criteria for Medicaid reimbursed in-residence services at the NF. (Department's Exhibit A. p. 1)

5. The Appellant was advised of the Department's action on . (Department's Exhibit A, p. 1)

6. The instant appeal was received by the Michigan Administrative Hearings System (MAHS) on (Appellant's Exhibit #1)

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.

The Michigan Department of Community Health (MDCH) implemented functional/ medical eligibility criteria for Medicaid nursing facilities. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

There are five necessary components for determining eligibility for Medicaid nursing facility reimbursement:

- Verification of financial Medicaid eligibility
- PASARR Level I screening
- Physician-written order for nursing facility services
- A determination of medical/functional eligibility based upon a web-based version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online at the time the resident was either Medicaid eligible or Medicaid pending and conducted within the timeframes specified in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter.
- Computer-generated Freedom of Choice (FOC) form signed and dated by the beneficiary or the beneficiary's representative. [1]

Medicaid Provider Manual (MPM) §5 *et seq*
Nursing Facility Eligibility and [ ], pp. 7 - 14, April 1, 2012.

The MPM, [Nursing Facility Eligibility and Admission Section] lists the policy for admission and continued eligibility processes for Medicaid-reimbursed nursing facilities. This process includes a subsequent or additional web-based LOCD upon determination of a significant change in the beneficiary's condition as noted in provider notes or minimum data sets and that these changes may affect the beneficiary's current medical/functional eligibility status. (Emphasis supplied) *See* MPM 5.1.D

Section 5.1.D.1 further references the use of an online Level of Care Determination (LOCD) tool.

The LOCD is required for all Medicaid-reimbursed admissions to nursing facilities. A subsequent LOCD must be completed when there has been a significant change in condition that may affect the NF resident's current medical/functional eligibility status.

The Michigan Medicaid Nursing Facility LOC Determination's medical/functional criteria include seven domains of need:

- Activities of Daily Living,
- Cognition,
- Physician Involvement,
- Treatments and Conditions,
- Skilled Rehabilitative Therapies, Behavior, and
- Service Dependency.

[1] This edition of the Medicaid Provider Manual is identical to the version in place at the time of LOCD assessment and appeal.

Individual residents or their authorized representatives are allowed to appeal either a determination of financial ineligibility to the Department of Human Services or medical/functional eligibility to the Department of Community Health:

> **APPEALS – Medical/Functional Eligibility**
>
> A determination by the web-based Michigan Medicaid Nursing Facility LOC Determination that a Medicaid financially pending or Medicaid financially eligible beneficiary is not medically/functionally eligible for nursing facility services is an adverse action. If the Medicaid financially pending or Medicaid financially eligible beneficiary or their representative disagrees with the determination, he has the right to request an administrative hearing before an administrative law judge. … MPM, §5.2.A, NF Eligibility, page 14, April 1, 2012

The Department presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7.

<u>Door 1</u>
<u>Activities of Daily Living (ADLs)</u>

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 NF witness reviewers determined that the Appellant was independent in all fields of mobility.

<u>Door 2</u>
<u>Cognitive Performance</u>

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 NF witness reviewers determined that the Appellant had adequate short-term memory and that his cognitive skills for daily decision making were modified independent. They agreed on questioning from the Appellant's representative that the Appellant's memory problem was extant, but stated that on the date of assessment and the 7-day look-back period that he did not meet the functional/medical eligibility criteria on their review. Irrespective of family insights [voiced at hearing] his scoring did not qualify under Door 2. The Appellant can communicate in an understandable fashion.

Door 3
Physican 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 Physicians Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physicians Order changes in the last 14 days.

The evidence presented is uncontested that the Appellant was not qualified under Door 3 as he did not have the minimum qualifying number of physician exam visits or physician order changes within 14 days of the assessment. At his prior LOCD the Appellant met LOCD criteria at this door. *See* Department's Exhibit A, page 7

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

No evidence was presented indicating the Appellant had met the criteria listed for Door 4 at the time of the assessment.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The Appellant 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.

No evidence was presented indicating the Appellant had met the criteria listed for Door 5 at the time of the assessment.

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.

No evidence was presented indicating that Appellant met the criteria set forth above to qualify under Door 6. The NF witness reviewers testified that they had no information relative to the Appellant's diagnosis of Paranoid Schizophrenia with severe Neuroleptic Tardive Dyskinesia as part of their NF record. They testified that there were no socially inappropriate behaviors, resistance to care or challenging behaviors manifest during the 7-day look-back period.

Door 7
Service Dependency

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

It was uncontested that the Appellant had not been a NF resident/participant for one year.

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In this case, the Department representative, Aasted, questioned the NF witness Michelle Karlander, RN/MDS coordinator concerning her preparation of the LOCD assessment conducted on

That testimony showed that the Appellant, on , did not meet the qualifying criteria at any door – although NF reviewers testified that they were acting without knowledge of the Appellant's psychiatric diagnosis of Paranoid Schizophrenia and Neuroleptic Tardive Dyskinesia.

They added that while he had some physican contact under Door 3 - his number of physican visits and orders did not score as qualifying during this assessment period.

The Appellant's representative focused his questioning on Exhibit #2 using his historical knowledge to describe his brother as a man who suffers the above referenced psychiatric ailments since childhood – but who is also high functioning. Conversely, owing to his mental illness, he is also subject to prolonged periods of confusion, memory loss and substance abuse – when he self medicates.

He voiced his concern on closing that the LOCD was a "cookie cutter" approach which did not capture his brother's longstanding cognitive or behavioral issues – particularly during the abbreviated look-back periods of

On review, if there had been another significant change in condition the NF reviewers/providers are obligated under the MPM to document such development in their notes and reassess their resident. *See* MPM at 5.1.D.1

There was agreement between the parties that the Appellant requires 24-hour care – but not necessarily skilled nursing services at a NF. The guardian testified that the family was seeking additional time to ensure a proper placement – which was a concern echoed by the NF witnesses who were still [as of the date of hearing] seeking a secure placement for the Appellant.

As guardian the Appellant's brother will likely benefit from seeking counsel from the Appellant's Community Mental Health (CMH) case manager to transition the Appellant back to their care and attention. If he believes the facts merit a more restrictive placement – he will need to advocate that position as clearly and thoughtfully as he did in today's contest.

The LOCD process is designed to be a snapshot of an individual's condition versus that person's need for NF services and Medicaid reimbursement thereto. When the LOCD merits no access through any domain of eligibility other processes and services attach subject to medical necessity.

The Appellant's physical injury has healed to the point that he is perhaps not fleet of foot – but he is nevertheless "independent."[2] Under the care of medical providers for several months now it is likely that the Appellant is taking his many medications on a regular basis and is thus better oriented and demonstrating better behavior than a "panicked self medicating" person afflicted with Schizophrenia might present – thus the need for contact and candor by the guardian with the local CMH is paramount.

Based on the questioning posed by Aasted, the answers of the NF witnesses and their testimony the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on review conducted

The ALJ finds that the Appellant failed to preponderate his burden of proof [under either record] to establish that the Department erred in reviewing his medical/functional eligibility status. The Appellant does not require Medicaid reimbursed NF level of care as demonstrated by the application of the LOCD tool.

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.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

____
Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: ____4-2-12___________________

[2] By nursing care standards.

***** 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.