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. 2012-42844 NHE
Case No.

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 . The Appellant was present and testified. Power of Attorney, was present on her behalf. The facility Social Services Director, , was present.

, Long-Term Care Analyst, represented for the Department. Her witnesses included , R.N., MPRO; , the MDS coordinator at the facility and , Director of Nursing for the facility.

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 and resident of , a licensed long-term care facility.

2. The Appellant was admitted to the facility with Medicare benefits.

3. The Appellant exhausted her Medicare benefits and thereafter spent down her own assets prior to becoming Medicaid eligible.

4. On [REDACTED] a Medicaid Level of Care determination was completed for the Appellant and she established eligibility through Door I.

5. On [REDACTED], following a significant change in her condition, the Appellant was again assessed under the NF LOC evaluation tool. She was found to be ineligible for nursing facility placement based upon failure to qualify via entry through one of the seven doors.

6. On [REDACTED], the Appellant's sought the LOC Immediate Review from the Michigan Peer Review Organization (MPRO). They found that the Appellant did not meet the exception criteria applied to the immediate review.

7. The Department issued an Adequate Action Notice on [REDACTED] informing the Appellant of its determination and her further appeal rights.

8. The Appellant appealed the Notice [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 5.1.D 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,* [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, MI Choice, 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, July 1, 2012, 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 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. **(revised 7/1/10)**

See MDCH Nursing Facility Eligibility and Admission Process, Page 7, 7/1/12.

The Level of Care 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.

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, provides that the Appellant must score at least six points to qualify under Door I.
>
> > **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

The LOC, 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."

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.

Door 4
Treatments and Conditions

The LOC indicates that in order to qualify under Door 4, the Appellant must receive, within 14 days of the assessment date, any one of the

following health treatments or demonstrated any one 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 LOC 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

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 provides that the Appellant would qualify under Door 6 if the Appellant had a score under one 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.

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 MI Choice or PACE program, and required ongoing services to maintain her current functional status.

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Exception Process

The [redacted] 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,
July 1, 2012.

Uncontested testimony was presented indicating that when the LOC was conducted in [redacted] the Appellant had entered through Door I. A substantial change in her condition occurred with her functional status after treatment, thus the facility completed a new LOC on [redacted] The Department determined the Appellant did not

qualify due to failure to enter through any of the seven doors. Uncontested evidence of the Department score for each door was presented.

The Appellant did not dispute the score for any of the seven doors at hearing. Her testimony primarily consisted of her current medical condition. The Appellant stated her condition had declined since her assessment in [redacted] She said her left leg hurts and it takes her a long time to get up. She is more tired from activity than she was in [redacted] She said she is in danger of falling and had to give up her walker even though she did not want to. The MDS coordinator at the facility concurred and stated her condition has declined. Evidence was presented the Appellant is now participating in physical therapy. Additionally, she is in a wheelchair for mobility at time of hearing. At the time of assessment in [redacted] she was ambulatory with a walker. Physical therapy was restarted the same week as the hearing, in [redacted]. The Appellant was asked and answered she did not disagree with the determination that was made back in [redacted]

The Appellant's [redacted], said he did not disagree with the findings of the facility back to [redacted]. He stated his concern for her condition now, indicating the Appellant had declined quite a bit.

The issue before this ALJ at hearing is only whether the Department properly determined the LOC in [redacted]. That is the determination that was appealed and this ALJ is limited in her authority at hearing. The Appellant's current medical/functional status must be addressed by the facility if it has changed. This ALJ is without authority to consider her current medical condition at this hearing. Additionally, this ALJ must apply the published policy stated above.

The Department representative stated at hearing she had spoken with the facility's Director of Social Services one week prior to hearing; she had specifically informed him the facility could initiate another LOC if the Appellant's condition had changed substantially. The Director of Social Services testified he had spoken with the Department and concurred he had been told the facility could do another LOC. He stated that although the Appellant's condition had changed, at the time he spoke with the Department the change would not have affected the LOC score.

In summary, the uncontested evidence of the Appellant's condition in [redacted] is as follows: She is independent in performing her Activities of Daily Living, thus, no longer qualifies through Door 1. She does not have short-term memory problems, is well understood and passed her mini mental exam, thus did not enter through Door II. She had 2 order changes in the 14-day look back period for Door III. She had no physician visits during this time. She did not qualify through this door. She does not have the conditions listed to meet criteria of Door 4. She was not receiving skilled therapy at the time of assessment in February, so she does not qualify through Door 5. She does not exhibit behavioral conditions such as wandering, resistant to care or socially inappropriateness. She is not suffering delusions, thus does not enter through Door 6.

It is undisputed the Appellant has not been a service participant for at least 1 year, thus she does not enter through Door 7.

Following this determination the Appellant requested an immediate review by MPRO. It was completed. The MPRO Project Manager went through each of the exception criteria in detail and testified that the Appellant did not meet any of the exception criteria. The Appellant did not contest this testimony insofar as it addressed her condition in

The MDS Coordinator, the Appellant and the Appellant's each assert she should meet the frailty criteria due to her current condition. This evidence could not be considered by this ALJ for the reasons explained above.

The Appellant's functional status in when the LOC was completed, is the only evidence this ALJ can consider. The uncontested evidence establishes that the Appellant did not meet the LOC criteria published by the Michigan Department of Community Health at that time. The ALJ finds that the Department has properly completed the LOC in accordance with its own policy requirements.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department followed its own policy and criteria when it 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.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: 7/2/2012

*** **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.