

**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:

██████████,

Appellant

Docket No. 2012-21515 PCE

Case No. ██████████

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████, R.N, appeared on behalf of ██████████. ██████████ represented the Appellant. The Appellant was present and testified.

ISSUE

Did the Department properly determine that the Appellant is not eligible for PACE services at ██████████?

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. The Appellant is currently residing in a semi-independent apartment facility located in ██████████.
2. The Appellant has the following diagnoses: Bipolar disorder, COPD/Asthma, Sleep Apnea, Diabetes Mellitus, Hypertension, Dyslipidemia, Hypothyroidism, Kidney Disease, Obesity, GERD, Fibromyalgia, PTSD and Peripheral Neuropathy.
3. ██████████ (the Department) is a contract agency of the Michigan Department of Community Health (Department) responsible for the Program of All-Inclusive Care for the Elderly (PACE) which is geared to the provision of socially and clinically supervised services for an elderly population diagnosed with chronic medical conditions.

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4. The Appellant was enrolled in the PACE program at ██████████ from ██████████, to ██████████. The Appellant voluntarily disenrolled from the PACE program to move to the state of ██████████.
5. Subsequently, the Appellant returned to Michigan and initiated an application for enrollment in the PACE program.
6. On ██████████, ██████████, LLMSW, completed a Michigan Medicaid Nursing Facility Level of Care redetermination on the Appellant. ██████████ determined that: the Appellant was independent in her Activities of Daily Living, the Appellant's 'cognitive performance short term memory' was okay, the Appellant's cognitive skills were modified independent, the Appellant could make herself understood, the Appellant did not have any physician involvement within 14 days of the evaluation, the Appellant did not have any treatment and conditions within 14 days of the evaluation, the Appellant was not receiving skilled rehabilitation therapies at the time of the assessment, the Appellant had not exhibited any challenging behaviors within 7 days of the evaluation and that the Appellant has not been in the PACE program for more than one year.
7. Also on ██████████, ██████████, R.N. completed a Braden Scale Assessment to determine the Appellant's risk for pressure sores. ██████████ concluded that the Appellant was not at risk for skin breakdown.
8. On ██████████, ██████████ concluded that the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care criteria for placement in the PACE program.
9. On ██████████, ██████████ examined the Appellant. ██████████ concluded that the Appellant has a number of chronic medical conditions but was stable and functions well in her current living environment. ██████████ recommended continued non-PACE community based placement. (Department Exhibit I, pp. 20-23)
10. On ██████████, ██████████ completed a Tinetti Assessment to determine the Appellant's need for physical therapy. ██████████ determined that the Appellant had no medical need for physical therapy. (Department Exhibit I, pp. 24-25)
11. On ██████████, the Michigan Administrative Hearing System for the Department of Community Health received the Appellant's request for hearing. (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, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

Section 5.1.D. and 5.1.E, of the Medicaid Provider Manual (MPM) references the use of the online Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) tool. The LOCD must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE, where available. MPM, §5.1.D., 5.1.E, NF Coverages, July 1, 2011, pp. 8-13.

The LOCD tool consists of seven-service entry Doors. 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 services, the Appellant must meet the requirements of at least one Door. The Department presented testimony and documentary evidence that the Appellant did not meet criteria at any Door. Further assessment by the CentraCare Enrollment Team determined that the Appellant was ineligible for PACE services.

A determination of medical/functional ineligibility is an adverse action appealable through the Michigan Department of Community Health. MPM, *Supra* at pages 8-13.

To be eligible for PACE enrollment or continued enrollment, applicants or participants must meet the following requirements:

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Human Services)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.
- Receive a comprehensive assessment of participant needs by an interdisciplinary team.

- Be appropriate for placement in PACE based on completion of the Michigan Medicaid Nursing Facility Level of Care Determination.
- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.
- Not concurrently enrolled in the MI Choice program.
- Not concurrently enrolled in an HMO.

MPM, PACE, §3.1 Eligibility Requirements, July 1, 2011, at page 3.

The evidence in this case shows that on ██████████, ██████████ assessed the Appellant's eligibility for the PACE program using the Michigan Medicaid Nursing Facility Level of Care Determination tool (LOCD). ██████████, R.N., testified for ██████████. ██████████ testified that on ██████████, ██████████, LLMSW completed the Appellant's LOCD.

In order to be found eligible for Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door. ██████████ testified that ██████████ LOCD shows that the Appellant did not meet the criteria for any LOCD door. Specifically, ██████████ concluded the following for each 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

██████████ concluded that the Appellant was independent in Activities of Daily Living. Neither the Appellant nor her representative dispute ██████████ conclusion that the Appellant does not meet LOCD Door 1 criteria. I find based on the evidence presented that the Appellant is independent in her Activities of Daily Living and does not meet LOCD Door 1 criteria.

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."

██████████ concluded that the Appellant had okay short term memory, modified independent cognitive skills for daily decision making, and that the Appellant was able to make herself understood. The Appellant and her representative disputed ██████████ finding with regard to Door 2. The Appellant testified that she does have poor short term memory and often forgets many things. The Appellant's representative, ██████████, testified that she and her staff often remind the Appellant about basic daily activities, etc. The Appellant's physician, ██████████, opined in her ██████████ letter (Appellant's Exhibit 1) that the Appellant has moderate impairment in cognitive skills needed for daily living due to deficits in short term memory and in judgment and impulse control. ██████████ indicated in her letter that the Appellant has problems cooking meals, paying bills, keeping appointments and keeping her medications straight. ██████████ indicated in her letter that she had not performed a Mini Mental Status Exam and relied upon a Mental Status Exam provided to her. ██████████ indicated that the Appellant has had an MRI, CT scan, and EEG and all were normal. ██████████ finally opined that the Appellant's physical and emotional abuse as a child and resulting Post Traumatic Stress Disorder contribute to the Appellant's diminished cognitive abilities.

The Appellant's representative testified that the Appellant was referred to the PACE program by a hospital emergency room social worker and this is a further indication that the Appellant required the services of the PACE program. ██████████ testified that she completed a LOCD and concluded that the Appellant had a memory problem and had a moderate impairment in her cognitive skills.

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██████████ testified in response that ██████████, on behalf of ██████████, found that the Appellant had chronic medical issues but was functioning well in the community. ██████████ concluded the Appellant's psychiatric disorders were well controlled and that the Appellant did not require PACE placement.

██████████ testified that she completed a LOCD and concluded that the Appellant met LOCD Door 2 criteria. ██████████, in response to questioning from ██████████, confirmed that while she has some knowledge of gerontology, ██████████ is not qualified to complete an LOCD determination. In addition, the LOCDs completed by ██████████ and ██████████ evaluated and considered the Appellant at two different points in time. The look back periods required by the LOCD tool for various doors are different for the ██████████, ██████████ LOCD completed by ██████████ and the undated and unsigned LOCD completed by ██████████. Therefore, even if ██████████ was qualified to complete a LOCD, the time at which she completed her evaluation was very different than the time period considered by ██████████. The issue to be decided in this decision is whether the Appellant met the LOCD criteria for any Door on ██████████, and not whether the Appellant met the criteria at a subsequent date and time.

The evidence shows that the Appellant's short term memory problems are relatively minor. The Michigan Medicaid Nursing Facility Level of Care Determination Field Definitions Guidelines, pages 6-10 provides the process to determine the Appellant's cognitive performance. The Appellant testified that she sometimes forgets appointments, dates, etc. The LOCD Field Guide criteria contemplate and apply to short term memory issues which impact the Appellant's daily self care activities and decision making. ██████████ evaluation found that the Appellant is functioning well in the community. ██████████ opined that the Appellant has a deficit in short term memory and provides examples of the Appellant's problems with cooking her meals, paying bills and keeping appointments straight. Those problems do not rise to the level of requiring daily routines, prompting and assistance to carry out daily tasks. ██████████ indicated in her letter that she had not completed a recent mental status examination and her opinion was in part due to information provided by the Appellant's representative. I find based on the evidence presented that the Appellant's cognitive performance does not meet LOCD Door 2 criteria.

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, page 5, 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

██████████ testified that no medical documentation was provided or was available which indicates that the Appellant had any physician involvement within 14 days of the ██████████, assessment. Neither the Appellant nor her representative disputed ██████████ finding regarding Door 4. I find based on the evidence presented that the Appellant does not meet LOCD Door 4 criteria.

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

██████████ testified that no medical documentation was provided or was available which indicates that the Appellant had skilled rehabilitation therapy within 7 days of the ██████████, assessment. Neither the Appellant nor her representative disputed ██████████ finding regarding Door 5. I find based on the evidence presented that the Appellant does not meet LOCD Door 5 criteria.

Door 6
Behavior

The LOC, page 6, provides a listing of behaviors recognized under Door 6: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, and Resists Care.

The LOC, page 8, 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.

██████████ testified that no medical documentation was provided or was available which indicates that the Appellant exhibited wandering, verbally abusive, socially inappropriate/ disruptive, or resisted care for at least 4 of the 7 days before ██████████, or was experiencing either delusions or hallucinations within 7 days of the ██████████, assessment. Neither the Appellant nor her representative disputed ██████████ findings regarding Door 5. The evidence shows that the Appellant has exhibited inappropriate and impulsive behavior in the past but no evidence was provided which shows those behaviors occurred within 7 days of the ██████████ assessment. I find based on the evidence presented that the Appellant does not meet LOCD Door 5 criteria.

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.

██████████ testified that no medical documentation was provided or was available which indicates that the Appellant was enrolled in the PACE program or in a nursing facility for at least one year and required ongoing services to maintain her current functioning. ██████████

██████████ testified that the Appellant voluntarily disenrolled from the PACE program on ██████████, so she could move to ██████████. The evidence presented shows that since that time the Appellant has maintained her functioning in the community. The Appellant and her representative testified that the Appellant was told by ██████████ staff that if she secured stable housing the PACE program would consider the Appellant’s reenrollment in the program. The Appellant testified that she has stable housing but

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needs the PACE program to maintain her functioning in the community. I find, based on the evidence presented, that the Appellant while out of the PACE program since [REDACTED], has been stable in the community and does not meet LOCD Door 7 criteria.

The evidence presented shows that the Appellant does not meet the Michigan Medicaid Nursing Facility Level of Care. Therefore, the Appellant is not eligible for PACE program enrollment at this time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant PACE enrollment.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Martin D. Snider
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

Date Mailed: 3/8/2012

cc:



***** 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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.