

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. 2012-32878 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 ██████████. The Appellant's daughter, ██████████, represented her at the hearing. Her daughter ██████████ was present for the hearing.

██████████, Long-Term Care Analyst, represented for the Department. Her witnesses included ██████████, R.N., MPRO; ██████████, Medical Social Worker, ██████████, MDS Coordinator and R.N.; ██████████, MDS coordinator, R.N.

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 an ██████ year-old Medicaid beneficiary and resident of Spectrum Health Rehab and Nursing Center, a licensed long-term care facility.
2. On ██████████, the Appellant was assessed under the NF 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.

3. On [REDACTED] the Appellant's sought the LOC exception as conducted by the Michigan Peer Review Organization (MPRO). They found that the Appellant did not meet the exception criteria.
4. The Department issued an Adequate Action Notice on [REDACTED] informing the Appellant of its determination and her further appeal rights.
5. 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 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, 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, 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 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)**¹

See MDCH Nursing Facility Eligibility and Admission Process, Page 6, 10/1/10.

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, page 3 of 9 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

¹ This edition of the Medicaid Provider Manual is substantially similar to the version in place at the time of LOC assessment and appeal.

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."

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

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

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 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.

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.*

In this case, the Department determined the Appellant did not qualify due to failure to enter through any of the seven doors. Evidence of the Department score for each door was presented. The Appellant's daughter stated she agreed with the evaluation conducted. She asserts the lengths of the look back periods are inadequate to assess her mother appropriately. She stated the only reason her mother is doing so well at the time of assessment is due to the care she receives at the facility. She stated she is fearful of what will happen if she is made to leave the facility.

It is undisputed the Appellant is independent with Activities of Daily Living, thus does not qualify through Door 1 of the written criteria. The witness for the Department stated that when the LOC was conducted she and the team looked at the diagnosis upon entrance, dementia. There were some short-term memory problems but they were not too significant. She said she still has authority over her own decision making, including medical decision making. She seeks out staff appropriately and she scored a 15 of 15 on the BIMS inventory, a mini mental inventory. She determined she is modified independent with decision making. Her daughter concurred. There is no evidence of record the Appellant qualifies through Door 2.

The Department witness further testified the physician visits with order changes during the look back period in effect for the Loc completed just a few days prior had qualified the Appellant through Door 3, however, when the determination was completed again [REDACTED] the look-back period changed and she no longer met the criteria at Door 3. She does not have the conditions listed to meet criteria of Door 4. The Appellant is not receiving skilled therapy, so she does not qualify through Door 5. She said the records do not reflect 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.

The evidence of record of the Appellant's current functional status is such that she does not meet the LOC criteria published by the Michigan Department of Community Health.

This ALJ cannot alter, change or disregard any of the criteria. While the concern about the look-back periods voiced at hearing by the Appellant's daughters is heard and understood, this ALJ cannot change this policy. A policy change is best taken up with the policy makers and state legislators. The controlling criteria only considers the documentation as created by the nursing facility and assessment conducted by nursing facility staff who complete the LOC. There is no area of the LOC determination for input from family members concerning the resident's abilities, thus it cannot be considered part of the LOC criteria.

The ALJ finds that the Department has 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: [REDACTED]

Date Mailed: 5-8-12

***** 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.