

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P. O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

████████████████████

Case

Docket No. 2012-49419 PCE
No. ██████████

Appellant

_____ /

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 ██████████. The Appellant represented ██████████. ██████████ appeared on behalf of the ██████████. Additional witnesses on behalf of the ██████████.

ISSUE

Did the Department properly determine that the Appellant is no longer eligible for PACE services at the Center for Senior Independence?

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.
2. The Appellant has the following diagnoses: Depression/Anxiety, diabetes mellitus, history of stroke, coronary artery disease, congestive heart failure, hypertension and peripheral vascular disease. She resides in her own home.
3. The ██████████ is a contract agency of the ██████████ responsible for the ██████████ for the ██████████ which is geared to the provision of socially and clinically

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supervised services for an elderly population diagnosed with chronic medical conditions.

4. The Appellant was enrolled in the [REDACTED] program from [REDACTED] 09, to the present.
5. On [REDACTED] the [REDACTED] completed a Michigan Medicaid Nursing Facility Level of Care redetermination on the Appellant.
6. It was determined, based upon the LOC 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, she scored 29 of 30 on her "mini mental" examination, scored 5 of 15 on the geriatric depression scale, the Appellant had 1 physician visit and 1 new order within 14 days of the evaluation, the Appellant did not have any treatment and conditions within 14 days of the evaluation, the Appellant participated in 15 minutes of occupational therapy and 15 minutes of physical therapy during the 7 day look back period, the Appellant had not exhibited any challenging behaviors within 7 days of the evaluation and that the Appellant does not require ongoing services although she has been a participant in the program for over 1 year.
7. On [REDACTED] the Center for Senior Independence concluded that the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care criteria for continuation in the [REDACTED] program. She was provided Notice of ineligibility to remain in the program.
8. On [REDACTED] the [REDACTED] for the [REDACTED] received the Appellant's request for hearing.

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 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] implemented functional/medical eligibility criteria for Medicaid nursing facilities, MI Choice, and [REDACTED]

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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 ██████████ 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 ██████████ services.

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

To be eligible for ██████████ 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 [REDACTED] the Center for Senior Independence assessed the Appellant's eligibility for continued participation in the [REDACTED] program using the [REDACTED]. In order to be found eligible for [REDACTED] placement the Appellant must meet the requirements of at least one Door. The Department witness' testimony was that the Appellant's [REDACTED] shows that she is no longer eligible to participate with the program because she does not meet the criteria for any [REDACTED] door. Specifically, the following was concluded 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

It is undisputed that the Appellant is independent in Activities of Daily Living. There is no evidence to support a different conclusion. 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."

The Department witness testified the Appellant first entered the program through the door. She had suffered a stroke and experienced cognitive challenges as a result. She has improved over time and with treatment, thus no longer qualifies through this Door. She stated the Appellant was rated memory okay rather than as having memory problem. She is rated as modified independent and makes herself understood. She scored 29 of 30 on her mini mental examination. She scored 5 of 15 on the geriatric depression scale and correctly answered all 10 questions posed when assessing her memory. She no longer qualifies through this entry door.

The Appellant asserts she still has a memory problem. She said she is totally confused. She stated ██████████ said she would take her back to ██████████ room if she gets kicked out of this program.

This ALJ finds the testimony and documentation from the Center for Senior Independence is sufficiently reliable to sustain their determination. This ALJ is persuaded by the score of the "mini mental" examination and correct answers for all 10 memory questions posed to the Appellant when assessing for this Door. I find the Appellant does not qualify for entry through this Door.

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.

The evidence of record establishes the Appellant had 1 physician appointment and 1 new order during the 14 day look back period. The Appellant raised the issue of attending insulin clinic. It was clarified that visits to the clinic for blood sugar checks and to provide insulin are not considered physician visits or order changes as contemplated in the field guidelines for completion of the ██████████.

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

It is undisputed the Appellant did not have any of the pertinent medical conditions to remain eligible via this entry door.

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

The Center for Senior Independence testified the Appellant had participated in 30 minutes of skilled therapy within the look back period. She had 15 minutes each of occupational and physical therapy. This is just short of the requirement of participating in at least 45 minutes of skilled therapy. The Appellant asserted she was there for longer than the 30 minutes reported. The testimony from the Center indicated she may have been present at the health center for longer because she is and all participants are encouraged to use the center to maintain their health, however, the skilled therapy portion of time spent there totaled 30 minutes during the look back period.

This ALJ finds the reliable evidence of record supports the determination that the Appellant did not qualify for entry through this Door.

Door 6
Behavior

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

The ██████, page 8, provides that the Appellant would qualify under Door 6 if the Appellant had a score under one of 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.

The Center presented testimony the Appellant did not exhibit any of the behaviors of concern. The Appellant asserted her family tell her she gets angry. This ALJ finds the Center has made the correct determination based upon the criteria contained in the ██████ and its field guide. The Appellant is not qualified to enter through this Door.

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 ██████ program, and required ongoing services to maintain her current functional status.

The Center provided testimony the Appellant does not require ongoing services to maintain her functional status in the community. It was stated she will be referred to a physician for care and any necessary referrals. It was stated she has the ability to see a regular physician and pick up her own medications without services being provided.

The Appellant objected to the arrangement. She stated she is totally confused about why she cannot participate any longer and her ██████ told her she would take her to ██████ emergency room if she got kicked out.

I find, based on the evidence presented, that the Appellant does not require special services to remain functional in the community. She does not qualify for program participation through this Door.

The evidence presented shows that the Appellant does not meet the ██████

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Therefor e, the Appellant is not eligible for 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 terminated the Appellant PACE participation.

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

Date Signed: _____

Date Mailed: _____

cc:

[Redacted]

***** 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.