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) 373-4147

IN THE MATTER OF:

Docket No. 2013-10224 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 on . Appellant appeared on her own behalf. Her witnesses were , CMH OBRA Therapist and , R.N., CMH. , LTC Program Policy Specialist represented the Department of Community Health. Her witnesses were , R.N., MPRO Project Manager; , R.N., Clinical Reimbursement Coordinator; , Clinical Reimbursement Specialist; and , Business Office Manager.

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. Appellant is a -year-old Medicaid beneficiary and current resident of Health and Rehab Center ( ). (Exhibit B)

2. Appellant was admitted to following an assessment under the Nursing Facility (NF) Level of Care Determination (LOCD) on and found to require continued NF placement under Door 1 – Activities of Daily Living. (Exhibit B, Testimony)

3. On , Appellant was assessed again under the NF LOCD and found to be independent at all stages, Doors 1 – 7. 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. (Exhibits C-1, C-2)

4. The Appellant was advised of the Department's action via Advance Action Notice on [redacted]. (Exhibit D)

5. On [redacted], Appellant requested an immediate review of the determination by MPRO. (Exhibit E-1)

6. MPRO conducted its own review and also determined that Appellant no longer met eligibility criteria for Medicaid reimbursed in-residence services at a NF. (Exhibits E-1, E-1a, and E-2)

7. On [redacted], MPRO advised Appellant in writing that she no longer qualified for nursing facility level services based on the LOCD. (Exhibit F)

8. The instant appeal was received by the Michigan Administrative Hearing System (MAHS) on [redacted]. (Exhibit G)

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.

Medicaid Provider Manual (MPM) §5 *et seq*
Nursing Facility Eligibility and [ ], pp. 7 - 14, January 1, 2013.

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.

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.

Door 1
Activities of Daily Living (ADLs)

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 Appellant was independent in all fields of mobility. As such, the Appellant no-longer qualified through Door 1.

Door 2
Cognitive Performance

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 Appellant's short-term memory was okay, that her cognitive skills for daily decision making were independent, and that she was able to make herself understood. As such, Appellant did not qualify under Door 2.

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.

Appellant had no physician exam visits or physician order changes within 14 days of the assessment. As such, Appellant did not qualify under Door 3.

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.

Door 7
Service Dependency

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

The LOC Determination provides that the Appellant could qualify under Door 7 if he is currently (and has been a participant for at least one (1) year) being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility, requires ongoing services to maintain current functional status, and no other community, residential, or informal services are available to meet the applicant's needs.

Here, Appellant had been a nursing facility resident for more than one year, but the Department witnesses testified that Appellant no longer required a NF level of care to maintain her current functional status.

Appellant testified that she has emotional illnesses that cause her to be very depressed and anxious. Appellant also testified that she suffers from panic attacks. Appellant indicated that she was having difficulty thinking on the day of the hearing.

Appellant's first witness testified that Appellant has been in the nursing home for 26 months and that she would likely suffer transfer trauma if moved. Appellant's witness indicated that Appellant suffers from bowel and bladder incontinence, from severe headaches and migraines and has multiple medical diagnoses. Appellant's witness indicated that Appellant does not get along with others and is better off in her current placement because she has her own room. Appellant's witness indicated there are limited housing options in the county for Appellant.

The record was held open for two weeks following the hearing to see if Appellant's recent PASARR could override the LOCD. The PASARR was received on , but it did not override the LOCD. (Exhibit I)

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.

Based on the evidence presented the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on review conducted .

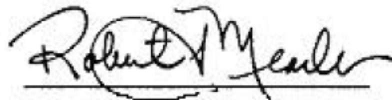
The ALJ finds that the Appellant failed to preponderate her burden of proof to establish that the Department erred in reviewing her medical/functional eligibility status. The Appellant does not require Medicaid reimbursed NF level of care as demonstrated by the application of the LOCD tool.

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.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

Date Mailed: 4/25/2013

***** 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 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.