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. 2013-20536 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 . , , represented the Appellant. , the Appellant, was present. was present as a witness for the Appellant. , , represented the Department. , was present as a witness for the Department. , , , , , , and , , all from , appeared as witnesses for the Department.

ISSUE

Did the Department properly determine that the Appellant does not require 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 long-term care facility.

2. Medicaid policy requires nursing facility residents to meet the medical/functional criteria on an ongoing basis. The Michigan Medicaid Nursing Facility Level of Care Determination ("LOC") medical/functional criteria include seven domains of need: Activities of Daily Living, Cognitive Performance, Physician Involvement, Treatments and Conditions, Skilled

Rehabilitation Therapies, Behavior, and Service Dependency. *Medicaid Provider Manual, Nursing Facility Coverages, October 1, 2012, Pages 9-11.*

3. A subsequent LOC must be completed when there has been a significant change in condition that may affect the resident's current medical/functional eligibility status. *Medicaid Provider Manual, Nursing Facility Coverages, October 1, 2012, Page 11.*

4. On or about [redacted], the Appellant was initially assessed under the LOC evaluation tool and was found to be eligible for nursing facility placement. (Hearing Summary)

5. On [redacted], the Appellant was re-assessed under the 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. (Exhibit B; Hearing Summary)

6. On [redacted], the Appellant's [redacted] contacted [redacted] to request an exception review and [redacted] denied eligibility. (Exhibit C; Hearing Summary)

7. On [redacted] issued a notice to the Appellant stating [redacted] no longer qualified for nursing facility level services based on the LOC and services would be terminated in 90 days. (Exhibit D)

8. On [redacted], a Request for Hearing contesting the determination was filed on the Appellant's behalf. (Exhibit E)

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.

Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. In accordance with the federal regulations the Michigan Department of Community Health (MDCH) implemented functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

Section 5 of the Medicaid Provider Manual, Nursing Facilities Coverages Section, 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. *Medicaid Provider Manual, Nursing Facility Coverages, October 1, 2012 Pages 7-15.*

Section 5.1.D.1 of the Medicaid Provider Manual Nursing Facility Coverages Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination ("LOC") tool. *Medicaid Provider Manual, Nursing Facility Coverages, October 1, 2012 Pages 9-11.* The LOC is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE. A subsequent LOC must be completed when there has been a significant change in condition that may affect the resident's current medical/functional eligibility status. *Medicaid Provider Manual, Nursing Facility Coverages, October 1, 2012 Page 11.* A written form of the LOC, as well as field guidelines are found in the *MDCH Nursing Facility Eligibility Level of Care Determination, Pages 1-9, 3/07/05* and *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines, Pages 1-19, 3/15/05.* (Exhibits F and G)

The LOC 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. (Exhibit F)

In order to be found eligible for Medicaid nursing facility coverage the Appellant must meet the requirements of at least one Door. The November 28, 2012 LOC assessment was the basis for the action at issue in this case:

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 review period for Door 1 is 7 days.

(Exhibit F, pages 1-3)

For the [redacted] LOC assessment, the Appellant was scored as independent for bed mobility, transfers, toilet use and eating. (Exhibit B) The RN

Patient Care Manager testified a Minimum Data Set (MDS) was completed just prior to this assessment. (Testimony of RN Patient Care Manager)

The Appellant's [redacted] testimony indicates that there were issues with toilet use prior to the Appellant's admission to the nursing facility. The Appellant would not allow anyone to come into her home and care for her. (Testimony of [redacted]) The Appellant testified she does for herself what has to be done if she can do it and she never refused any help offered. (Testimony of Appellant)

The review period for Door 1 is only 7 days. Accordingly, issues with toilet use prior to her admission to the nursing facility can not be considered to meet the criteria for this Door. No evidence was presented contesting the determinations that the Appellant was independent for bed mobility, transfers, toilet use and eating at the time of the [redacted] re-assessment. Therefore, the Appellant did not score at least six (6) points to qualify 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."

(Exhibit F, pages 3-4)

The Appellant was scored as short term memory okay, independent with cognitive skills, and able to make herself understood. (Exhibit B) No evidence was presented contesting these determinations. Accordingly, the Appellant did not meet the criteria to qualify through Door 2.

Door 3
Physician 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 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.

(Exhibit F, pages 4-5)

The Appellant was scored as having no physician visit exams and no physician order changes during the 14 day review period for the LOC assessment. (Exhibit B) No evidence was presented contesting the number of physician visit exams or physician order changes during the relevant review period for this LOC assessment. With no physician visit exams and no physician order changes during the relevant review period, the Appellant did not meet the criteria to qualify through 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

(Exhibit F, page 5)

The Appellant uses insulin but there were no order changes during the 14 day review period for this Door. (Testimony of RN Patient Care Manager) No evidence was presented indicating that the Appellant received any of the specified treatments or demonstrated any of the specified health conditions during the relevant time period to meet the criteria for Door 4 for the LOC assessment.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The applicant 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. (Exhibit F, pages 5-6)

No evidence was presented indicating that the Appellant received any skilled therapies during the relevant time period for the LOC assessment. Accordingly, the Appellant did not meet the criteria to qualify through Door 5.

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.

(Exhibit F, pages 6-7)

The Appellant was scored as not displaying any of the behavioral symptoms or problem conditions considered to qualify under Door 6. (Exhibit B) The Appellant's testified that the Appellant has refused care, specifically medications. The Appellant's stated the Appellant complains of pain to her family but refuses pain medication. The Appellant has a history of this. The family found the Appellant was not taking medications back when she was living on her own. The Appellant will not ask for help even if she needs it. Additionally, the Appellant's indicated there is an issue of delusions based on the Appellant telling them stories about things that have happened at the nursing facility. Initially, they were not sure what to believe and if these stories should be taken to those in charge. But the Appellant's now understand these are things the Appellant has made up in her mind and believes happened, but did not rally happen. In part, this is why they believe the Appellant needs supervision. (Testimony of

The Appellant testified she has taken the Tylenol. (Appellant Testimony)

The testified that the medication order related to pain is Tylenol PRN. Since this is an as needed medication, and the Appellant denies pain, it is not considered resisting care to choose not to take it. The Appellant has not refused a regularly scheduled medication. (Testimony of RN Patient Care Manager) Further, the nursing facility has no documentation of delusions in the relevant time period. There is only one documented behavioral note of crying. The nursing facility was not aware of the family's concerns regarding delusions. (Testimony of RN Patient Care Manager and Life Enrichment Manager)

While the Appellant's have some concerns about refusal to take pain medication and delusions, it appears there was never sufficient concern to discuss this issue with the nursing facility. The Appellant did not refuse any regularly scheduled medications and denied having pain to nursing facility staff. Further, no delusions or other behaviors were documented by the nursing facility in the relevant review period. The evidence is not sufficient to support a finding that the Appellant met the criteria through Door 6.

Door 7
Service Dependency

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

> The assessment provides that the applicant 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.
>
> (Exhibit F, page 7)

The Appellant had not been a participant for at least one year when the assessment was completed. (Testimony of RN Patient Care Manager) Accordingly, the Appellant could not qualify through Door 7.

The Appellant did not qualify through any of the Seven Doors on the assessment. (Exhibit B) However, an exception review was requested by the Appellant's .

Exception Process

The PACER Project Manager with MPRO testified and provided documentation that MPRO received the LOC Exception Process request from the nursing facility. (PACER Project Manager Testimony and Exhibit D)

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,*
> *October 1, 2012 Page 12.*

The exception process considers frailty, behaviors and treatments. went through each of the exception criteria in detail. The Appellant did not meet any of the exception criteria based on the information provided by the nursing facility. (; and Exhibit C)

explained that the Appellant did not meet the criteria for any of the Doors 1 – 7 of the LOC assessment or an exception, therefore, a final denial letter was issued on . (Exhibit D)

The Appellant's are understandably concerned based on what occurred prior to the moving into the nursing facility. They do not see the Appellant being able to care for herself living on her own again, and noted that the Appellant did not allow anyone to come into her home and care for her. The Appellant would only let her do so much. Further, when the Appellant was admitted, she had to pay privately for nursing facility services until all her money was gone. All of her furniture and things also had to be distributed. The Appellant has nothing left and no where to go. (Testimony of

However, this ALJ is limited to reviewing the determination made based on the assessment. Based on the available information, it is decided that the Department correctly determined the Appellant did not meet the criteria for Medicaid Nursing Facility Level of Care at the time the , LOC assessment and MPRO exception review were completed. Therefore, she was not eligible for Medicaid nursing facility services.

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 did not meet the criteria for Medicaid Nursing Facility Level of Care at the time the assessment was completed.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

/S/

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

Date Mailed: 03/14/13

***** 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.