

**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. 2013-4547 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, appeared on her own behalf. ██████████, Policy Specialist, represented the Department. ██████████, RN, MDS Nurse, ██████████ Administrator, and Erin Cloutier, Social Worker, 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 ██████-year-old 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, July 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, July 1, 2012, Page 11.*
4. On ██████████ the Appellant was initially assessed under the LOC evaluation tool and was found to be eligible for nursing facility placement through Door 1, Activities of Daily Living ("ADLs"). (Exhibit B)
5. On ██████████, 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 C)
6. On ██████████, the Appellant was re-assessed under the LOC evaluation tool and was found to be eligible for nursing facility placement through Door 6 based upon exhibiting socially inappropriate behavior. (Exhibit D)
7. On ██████████, 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 E)
8. On ██████████, ██████████ issued a notice to the Appellant stating she no longer qualified for nursing facility level services based on the LOC and services would be terminated in ██████ days. (Exhibit F)
9. On ██████████, the Michigan Administrative Hearing System received the Appellant's Request for Hearing. (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.

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, July 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, July 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, July 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 E and F)

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 E)

In order to be found eligible for Medicaid nursing facility coverage the Appellant must meet the requirements of at least one Door. The ██████████ 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 H, pages 1-3)

For the ██████████ LOC assessment, the Appellant was scored as: independent for eating, bed mobility, transferring and toilet use. (Exhibit E) The Appellant testified she can get around pretty good but needs assistance with hanging things up or getting things from closets. The Appellant stated she has problems with standing and some weight bearing movements. The Appellant stated she can handle a lot of things pretty well from her wheelchair, but not reaching up, far, or picking things up from the floor because she may slip out of her wheelchair. The Appellant stated she can manage regular bathroom stuff ok, unless she is at the doctor and things are set up differently. (Appellant Testimony)

The LOC only considers four specific ADLs under Door 1, eating, bed mobility, transferring, and toilet use. The Appellant's testimony did not dispute the determinations regarding her needs for assistance with these four ADLs other than if there was a need to use the bathroom at a doctor's office and things are set up differently. The possibility of needing assistance with toilet use when out at a medical appointment is not sufficient to change the scoring for the LOC assessment. Accordingly the Appellant's scored 4 points, which is not sufficient 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 H, pages 3-4)

The Appellant was scored as short term memory okay, independent with cognitive skills, and able to make herself understood. (Exhibit E) The Appellant did not contest these determinations in general, but may forget something from time to time. (Appellant Testimony) 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 H, pages 4-5)

The Appellant was scored as having no physician visit exams and no physician order changes during the █ day review period for the █ LOC assessment. (Exhibit E) The Appellant did not contest the lack of physician visit exams or order changes. (Appellant Testimony) 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 H, page 5)

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 July 11, 2012 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 H, pages 5-6)

The Appellant was scored as not receiving any skilled therapies during the relevant time period for the ██████████ LOC assessment. (Exhibit E) The Appellant testified she has not received therapy since the last discharge in ██████████ (Appellant Testimony) It was uncontested that the Appellant was not scheduled for or receiving any skilled therapy services during the seven day review 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 H, pages 6-7)

The Appellant was scored as displaying socially inappropriate behavior one day during the relevant time period for the ██████████ LOC assessment. The Appellant did not score as having displayed any of the other behaviors or problem conditions considered under this Door. (Exhibit E) The Appellant's testimony indicated there was an incident where she got mad. The Appellant stated she does not have delusions or hallucinations. (Appellant Testimony) The Social Worker testified the incident when the Appellant got mad was a different incident that was outside the review period for this LOC assessment. The incident that led to the scoring of displacing socially inappropriate behavior one day for ██████████ LOC related to the Appellant refusing to come to a care conference, known as Goal Plan Success at ██████████. (Social Worker Testimony) With exhibiting a listed behavior only one day during the ██████████ LOC review period, the Appellant did not meet the criteria to qualify 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 H, page 7)

The Appellant had been a participant for at least ██████ year when the ██████████ LOC assessment was completed, but the ongoing services needed to maintain current functional status are available in the community, residential, or informally to meet the Appellant's needs. The Appellant was not receiving any skilled care and could perform her own ADL care. (Exhibit E; RN MDS Nurse Testimony; Administrator Testimony; Policy Specialist Testimony) Accordingly, the Appellant could not qualify through Door 7.

The Appellant did not qualify through any of the seven Doors on the ██████████ LOC assessment. (Exhibit E)

This ALJ is limited to reviewing whether or not the Appellant met the criteria set out in the Medicaid Provider Manual policy. 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. Therefore, the Appellant 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 ██████████ LOC 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

Date Signed: ██████████

Date Mailed: ██████████

[REDACTED]
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CL/db

cc:

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***** 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.