

**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:

██████████,

Appellant

\_\_\_\_\_ /

Docket No. 2013-17120 PCE

Case No. ██████████

**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 Care Resources. ██████████ and ██████████, and ██████████ & ██████████ appeared as witnesses on behalf of Care Resources.

On ██████████ an Order of Dismissal was erroneously issued in this case and served on the parties. The undersigned hereby determines that the previously issued Order of Dismissal is void and this Decision and Order, which should have been issued and served on the parties, is being issued to replace the invalid order and the invalid order should be disregarded.

**ISSUE**

Did the Department properly determine that the Appellant was not eligible for PACE services at Care Resources?

**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. (Testimony).
2. The Appellant has the following diagnoses: Charcot-Marie-Tooth (CMT) disease, Lymphedema, curvature in spine, IBS, hypertension, Diabetes Type II, osteoporosis, obesity, and clinical depression. ██████ resides on ██████ own in an apartment. (Exhibits A-C).

- 3 Care Resources is a contract agency of the Michigan Department of Community Health (Department) responsible for the Program of All-Inclusive Care for the Elderly (PACE) which is geared to the provision of socially and clinically supervised services for an elderly population diagnosed with chronic medical conditions.
4. On ██████████, Care Resources completed a Telephone Intake Guidelines (TIG) with the Appellant. It was determined that the Appellant did not appear to qualify for enrollment. However, due to the Appellant's significant issues, the ██████████ for Care Resources granted an exception to allow for a home intake assessment. (Exhibits A-C, E)
5. On ██████████, Care Resources did a home assessment. ██████████, and ██████████ completed a Michigan Medicaid Nursing Facility Level of Care determination on the Appellant. It was determined that: the Appellant was independent in ██████████ Activities of Daily Living, the Appellant's "cognitive performance short term memory" was okay, the Appellant's cognitive skills were independent, the Appellant had 1 physician visit and no new orders within 14 days of the evaluation, the Appellant did not have any treatment and conditions within 14 days of the evaluation, the Appellant did not participate in any skilled rehabilitation therapies 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 was not a current program participant. Care Resources concluded that the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care criteria for enrolment in the PACE program. (Exhibits A, C, D, F and testimony).
6. On ██████████, Appellant was given an Adequate Action Notice of her denial of enrollment in the PACE program. (Exhibits A and C).
7. Appellant filed an appeal with Michigan Peer Review Organization (MPRO), and MPRO concurred with Care Resources and upheld the denial of enrollment on ██████████. (Exhibit H).
8. On ██████████ the Michigan Administrative Hearing System received Appellant's request for a hearing. (Exhibit 1).

### **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

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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, MI Choice, and PACE 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, January 1, 2013, pp. 9-14.

The LOCD 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 and that the Appellant was ineligible for PACE services.

A determination of medical/functional ineligibility is an adverse action appealable through the Michigan Department of Community Health. MPM, *Supra* at pp. 9-14.

To be eligible for PACE 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, January 1, 2013, at p. 3.

The evidence in this case shows that on ██████████, ██████████ and ██████████ did a home assessment to determine the Appellant's eligibility for enrollment in the PACE program using the Michigan Medicaid Nursing Facility Level of Care Determination tool (LOCD). In order to be found eligible for Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door. The Department's witnesses stated the Appellant's LOCD showed ██████████ was not eligible to participate in the program because ██████████ did not meet the criteria for any LOCD 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

The Department's witnesses determined the Appellant was independent in ██████████ Activities of Daily Living. The intake nurse actually had the Appellant get up and show ██████████ that ██████████ could complete these activities on ██████████ own. I find based on the information available at the time of the in home assessment that the Department's witnesses properly determined the Appellant was independent in ██████████ Activities of Daily Living and did 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."

This ALJ finds the testimony and documentation from the Care Resource is sufficiently reliable to sustain their determination that Appellant's memory was okay and ██████████ cognitive skills were independent. 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 one physician appointment and no new orders during the 14 day look back period. I find the Appellant does not qualify for entry through this Door.

### **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 be 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

It is undisputed that the Appellant had no skilled therapy within 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 LOC, page 6, provides a listing of behaviors recognized under Door 6: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, and 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.

Care Resources presented testimony that the Appellant did not exhibit any of the behaviors of concern. This ALJ finds Care Resources has made the correct determination based upon the criteria contained in the LOC and its field guide. The Appellant is not qualified to enter through this Door.

**Door 7**  
**Service Dependency**

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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.

Care Resources provided testimony that the Appellant was not currently being served by the PACE program, the MI Choice program, or in a nursing facility. I find based on the evidence presented, that the Appellant does not qualify for program participation through this Door.

The evidence shows the Appellant does not meet the Michigan Medicaid Nursing Facility Level of Care. Therefore, Appellant is not eligible for PACE program at this time. At the hearing, Appellant did not dispute the findings of the Department's witnesses, but indicated ██████ was not able to give the type of details at the time of the assessment that ██████ included in ██████ Request for a Hearing. ██████ also indicated ██████ condition has gotten worse since the assessment. Appellant was advised at the hearing that if ██████ condition has worsened since the assessment, ██████ could ask for a reassessment to see if ██████ would qualify now for the PACE program.

I find, based on the information available at the time of the assessment, that the Department correctly determined the Appellant was not eligible for the PACE program.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's enrollment in the PACE program.

**IT IS THEREFORE ORDERED** that:

The Department's decision is **AFFIRMED**.

/s/  
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William D. Bond  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

Date Mailed: 03/22/13

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CC:



**\*\*\* 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.