

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2013-26859 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.

Prehearing conferences were held on ██████████ and ██████████. After due notice, a telephone hearing was held ██████████. ██████████ represented the Appellant. ██████████, Assistant Attorney General, represented the Department. ██████████, Long Term Care Program Policy Specialist, was present.

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 Doors or 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. There is also an LOC Exception Review available for Medicaid financially pending or Medicaid financially eligible beneficiaries who do not meet medical/functional eligibility based on the web-based LOC Determination criteria, but demonstrate a significant level of long term care need. *Medicaid Provider Manual, Nursing Facility Coverages, October 1, 2012, Page 12.*
5. On ██████████, a LOC assessment of the Appellant was completed and she was found to be eligible for nursing facility placement through Door 1. (Exhibit B)
6. 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)
7. On ██████████ the Appellant contacted MPRO and requested an Exception Process review. (Exhibits D1 and D1a)
8. On ██████████, MPRO 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 D3)
9. On ██████████ the Michigan Administrative Hearing System received a Request for Hearing 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 G and H)

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. (Exhibits G and H)

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

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.

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."

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.

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

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.

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.

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 G, pages 1-7)

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 Nursing Facility Level Of Care Exception Process criteria is set forth below:

Applicants who exhibit the following characteristics and behaviors may be admitted to programs requiring the Nursing Facility Level of Care definition. An applicant need trigger only one element to be considered for an exception.

Frailty

The applicant has a significant level of frailty as demonstrated by at least one of the following categories:

- Applicant performs late loss ADLs (bed mobility, toileting, transferring and eating) independently but requires an unreasonable amount of time
- Applicant's performance is impacted by consistent shortness of breath, pain or debilitating weakness during any activity
- Applicant has experienced at least two falls in the home in the past month
- Applicant continues to have difficulties managing medications despite the receipt of medication set up services
- Applicant exhibits evidence of poor nutrition, such as continued weight loss, despite the receipt of meal preparation services

- Applicant meets criteria for Door 3 when emergency room visits for clearly unstable conditions are considered

Behaviors

The applicant has at least a one month history of any of the following behaviors, and has exhibited two or more of any these behaviors in the last seven days, either singly or in combination:

- Wandering
- Verbal or physical abuse
- Socially inappropriate behavior
- Resists care

Treatments

The applicant has demonstrated a need for complex treatments or nursing care.

(Exhibit D2)

In this case, the nursing facility completed the LOC assessment on [REDACTED] and determined that the Appellant did not qualify due to failure to enter through any of the seven Doors. (Exhibit C) On [REDACTED] the Appellant contacted MPRO requesting an immediate review, which was completed [REDACTED] (Exhibit D)

The Appellant's attorney briefly noted that there was no evidence to support the [REDACTED] LOC determination. It did not appear that the [REDACTED] LOC determination itself was contested during the prehearing conferences, rather just the result of that determination in light of an [REDACTED] letter issued by the Department. Specifically, during the [REDACTED] pre-hearing conference, the parties indicated they believed only brief oral argument would take place during the [REDACTED] hearing. Accordingly, the Department did not present witnesses and relied upon their submitted documentary evidence. (Exhibits A-H) Further, it is noted that no evidence was presented by the Appellant contesting the Appellant's score for any Door or relating to the frailty criteria.

Rather, from the pre-hearing conferences, the contested issue was what effect the above [REDACTED] letter had on the outcome of the [REDACTED] LOC determination. The [REDACTED], notice MPRO issued to the Appellant stated she no longer qualified for nursing facility level services based on the LOC and services would be terminated in [REDACTED] days. (Exhibit D3) The [REDACTED] letter issued by the Department of Community Health states:

1. **DETERMINATION:** The individual does not qualify for the level of services provided by a nursing facility and does not require specialized mental health/developmental disabilities services, but may need other mental health or developmental disability services. It is been further determined that the individual is likely to experience severe transfer trauma if the individual is moved from the current nursing facility.
2. **RESULT OF THE DETERMINATION:** The individual may continue to reside in a nursing facility under the provisions of the Borton v. Califano ruling.
3. **REASON FOR THE DETERMINATION:** The individual does not have physical needs which would indicate the need for a nursing facility, but has mental health or developmental disabilities needs which may require services. However, clinical information provided as part of the Annual Resident Review indicates potential for severe transfer trauma.

(Exhibit 1, page 3)

From the prehearing conferences it is clear that the Appellant was not being provided with timely, clear responses to inquiries about what if anything needed to occur after the [REDACTED] letter that specifically stated the Appellant may continue to reside in the nursing facility. It was hoped by all parties, and this ALJ, that that issue could be resolved without the need to continue with the scheduled hearing proceedings.

However, no resolution had been reached by the [REDACTED] hearing date. The Appellant's [REDACTED] Request for Hearing was contesting the [REDACTED] LOC determination. Administrative hearings have limited jurisdiction and as asserted by the Assistant Attorney General, this hearing is limited to reviewing only the LOC determination itself. There is no evidence to establish that the LOC determination or exception review was incorrect. Accordingly, 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 [REDACTED] LOC assessment and MPRO exception review were completed.

The Appellant should continue to work with the Department to ensure that any needed additional steps are taken that are necessary for apparent approval of nursing facility services, despite not needing nursing facility level of care, as stated in the [REDACTED] letter can be applied for her nursing facility stay.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that the Appellant did not meet the LOC or exception criteria at the time the [REDACTED] assessment.

