

**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. 2013-32555 NHE
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. ██████████, Appellant's son, appeared and testified on her behalf. Appellant and ██████████, another son, also testified as witnesses for Appellant.

██████████, Long Term Care Program Policy Specialist, represented the Department of Community Health. ██████████, a registered nurse at the ██████████ (██████████), and Rhonda Sealey, the Assistant Director of Nursing at the ██████████, also testified 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. Appellant is an ██████ year-old Medicaid beneficiary who has been diagnosed with, among other conditions, neuropathy; congestive heart failure; chronic obstructive pulmonary disease; hypertension; bronchitis; depression; dementia; hypothyroidism; asthma; angina; and peripheral vascular disease. (Respondent's Exhibit B, page 1; Testimony of ██████████).

2. Appellant was admitted as a resident at the ██████████, a long-term care facility, on ██████████. (Testimony of Sealey).
3. Medicaid policy requires nursing facility residents to meet the outlined medical/functional criteria on an ongoing basis. The Michigan Medicaid Nursing Facility Level of Care Determination (“LOCD”) 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 (MPM), October 1, 2012 version, Nursing Facility Chapter, pages 7-15).
4. A day after Appellant’s admission to the ██████████, a LOCD was made and it was determined that Appellant met the criteria for nursing facility level of care through Door 1. (Respondent’s Exhibit B, page 1).
5. Appellant underwent both physical therapy (PT) and occupational therapy (OT) after arriving in the facility. Her PT was completed on ██████████ and her OT was completed on ██████████. (Testimony of ██████████).
6. Under policy, a subsequent LOCD must be completed when there has been a significant change in condition that may affect the resident’s current medical/functional eligibility status. (MPM, October 1, 2012 version, Nursing Facility Chapter, page 11).
7. On ██████████, Appellant was assessed under the LOCD 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. (Respondent’s Exhibit D, page 1).
8. Appellant’s son then contacted ██████████ and requested an Exception Process review for the Appellant. On ██████████, ██████████ reviewed Appellant’s case. (Respondent’s Exhibit D, pages 1-2).
9. That same day, ██████████ issued a notice to the Appellant stating she no longer qualified for nursing facility level services and her services would be terminated in 90 days. (Respondent’s Exhibit F, page 1).
10. On ██████████, the Michigan Administrative Hearing System received Appellant’s Request for Hearing in this case. (Respondent’s Exhibit G, pages 1-10).

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 (MPM), Nursing Facility Chapter, 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. (MPM, October 1, 2012 version, Nursing Facility Chapter, pages 7-15).

Section 5.1.D.1 of the Coverages Section of the Nursing Facility Chapter of the MPM references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination (“LOCD”) tool. A LOCD is mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE. . (MPM, October 1, 2012 version, Nursing Facility Chapter, pages 9-11).

A subsequent LOCD must be completed when there has been a significant change in condition that may affect the resident’s current medical/functional eligibility status. . (MPM, October 1, 2012 version, Nursing Facility Chapter, page 11).

The LOCD 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. (MPM, October 1, 2012 version, Nursing Facility Chapter, page 11).

The [REDACTED] LOCD 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 have met 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.

Here, the [REDACTED] and the Department determined that Appellant did not pass through any of the 7 Doors and was therefore ineligible for a nursing facility level of care.

Given the LOCD and the testimony during the hearing, it is clear that the nursing facility's decision should be sustained. At the time of the LOCD, Appellant had completed both her physical and occupational therapy. She was also stable and, while she was receiving some assistance with certain tasks, none of that requested assistance related to the tasks identified in Door 1. At most, Appellant testified that she could have used some assistance with bed mobility, but never asked for such assistance and completed that task independently.

Similarly, while Appellant has medical problems, none of her conditions met the criteria for passing through Doors 2, 4, or 6. Moreover, the medical treatment Appellant was receiving did not reach the levels required by Doors 3, 4, or 6. Appellant required physical and occupational therapy when she arrived at the facility, but she had completed such therapy by the time of her LOCD and none was provided during the relevant time period. Finally, with respect to Door 7, Respondent properly noted that Appellant had not been a program participant for over a year and, consequently, did not qualify through that door.

In response, Appellant's representative and witnesses focused on Appellant's general health rather than the specific areas of the LOCD. However, the existence of Appellant's medical conditions is not in dispute and it is only the effect of those conditions on certain areas that is in question. The above policy is clear and, in order to be found eligible for Medicaid nursing facility coverage the Appellant must have met the requirements of at least one Door. The nursing facility properly applied that policy and Appellant failed to demonstrate that she met the requirements for at least one Door at the time of the LOCD.

Moreover, Appellant's representative and witnesses also focused on and testified regarding Appellant's deterioration in health following the LOCD. However, this Administrative Law Judge's jurisdiction is limited to reviewing the decision at issue in this appeal, *i.e.* the [REDACTED] determination that Appellant did not meet the criteria for nursing facility level of care, in light of the information available to Respondent at the time it made that determination. Subsequent events and changes in Appellant's medical condition are therefore irrelevant to this decision. To the extent Appellant's medical condition has changed, she and her representative remain free to pursue nursing facility coverage again at any time.

In addition to challenging the LOCD, Appellant's representative also indicated disagreement with the Exception Process criteria. The Department's policy related to LOC exception eligibility for nursing facility services is found in the MPM:

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.

[MPM, October 1, 2012 version, Nursing Facility Chapter, page 12.]

In this case, the nursing facility completed the LOCD on [REDACTED] and determined that the Appellant did not qualify due to failure to enter through any of the seven Doors. (Respondent's Exhibit C). That same day, Appellant's representative contacted MPRO requesting an immediate review, which was completed [REDACTED]. (Respondent's Exhibit D)

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.

[Respondent's Exhibit E.]

Here, the ██████████ Nurse Reviewer went through each of the exception criteria and the summary notes of the ██████████ review. ██████████ determined that the Appellant did not meet any of the exception criteria based on the information provided by the nursing facility. (Testimony of ██████████; Respondent's Exhibit D; Respondent's Exhibit F).

In response, Appellant's representative appears to argue that Appellant does in fact meet the criteria for the exception. For example, Appellant's representative and witnesses testified that Appellant has life-threatening asthma attacks and one of the elements described in the exception process is whether the applicant's performance is impacted by consistent shortness of breath, pain or debilitating weakness during any

activity. However, random, dangerous asthma attacks do not constitute the consistent shortness of breath required by the policy.

Appellant's representative also argues that Appellant is completely unable to manage her medications. One element in the exception review is whether the applicant continues to have difficulties managing medications despite the receipt of medication set up services. However, as testified to by ██████████, that element was not applicable in this case. Appellant was already in a nursing home at the time of that review and the facility performs medication management for all its residents, whether they have difficulties or not. Given that all nursing home residents receive medication management, the Department does not consider that element in cases such as these.

Additionally, as with the LOCD determination discussed above, Appellant's representative appears to argue that Appellant's health has deteriorated and that she may meet the criteria for the exception eligibility now. However, changes in Appellant's health since the Department's determination was made are immaterial to this decision as this Administrative Law Judge's jurisdiction is limited to reviewing the decision at issue in this case in light of the information available at the time the Department made its decision.

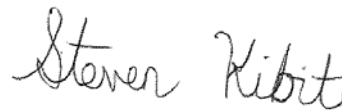
Based on the information available at the time of the exception review, the Department properly found that Appellant also did not meet the criteria for exception eligibility for nursing facility services as described in the Medicaid Provider Manual.

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 LOCD assessment and ██████████ exception review were completed in this case.

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

██████████
Date Signed: 7/30/2013

Date Mailed: 7/30/2013

[REDACTED]
Docket No. 2013-32555 NHE
Decision and Order

[REDACTED]
cc: [REDACTED]

***** 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.