

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2013-43572 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 ██████████ ██████████ daughter, represented the Appellant. ██████████ the Appellant, was present. ██████████, appeared as a witness for the Appellant. ██████████ Long Term Care Program Policy Specialist, represented the Department. ██████████, RN, Pacer Project Manager with Michigan Peer Review Organization ("MPRO") was present as a witness for the Department. ██████████, MDS Nurse, ██████████ Business Office Manager, and ██████████ Social Worker, all from ██████████, appeared as witnesses for the Department. ██████████ Administrator, ██████████, was also 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 an ██████-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, January 1, 2013, 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, January 1, 2013, Page 11.*
4. The Appellant was admitted to [REDACTED] on [REDACTED]. The Appellant became financially eligible for Medicaid on [REDACTED] (Hearing Summary)
5. LOC assessments were completed on [REDACTED] [REDACTED] and [REDACTED] but were not included in the exhibits. (Hearing Summary)
6. On [REDACTED], the Appellant was 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)
7. On [REDACTED], the Appellant's Daughter contacted MPRO and requested an Exception Process review for the Appellant. (Exhibit C)
8. On [REDACTED], 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 90 days. (Exhibit E)
9. On [REDACTED] the Michigan Administrative Hearing System received the Appellant's Request for Hearing. (Exhibit F)

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, January 1, 2013, 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, January 1, 2013, 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, January 1, 2013, 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 G)

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,
January 1, 2013 Page 12.*

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

At hearing, evidence of the Appellant's score for each door was presented by the MDS Nurse. The Department's evidence concerning the seven entry Doors was uncontested. The Appellant's daughter's testimony did not dispute the scores for each entry Door. Rather, the Appellant's daughter's testimony indicated disagreement with the Exception Process criteria and determination. (Daughter Testimony)

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 D)

The MPRO Nurse Reviewer went through each of the exception criteria and the summary notes of the MPRO review. MPRO determined that the Appellant did not meet any of the exception criteria based on the information provided by the nursing facility. (Nurse Reviewer Testimony; and Exhibits C and D) The discrepancies between the LOC scoring and the MPRO review notes were explained, specifically because the look back period for the exception review is longer for many of the criteria. However, it is concerning that the nursing facility would have used the date the LOC assessment was completed, [REDACTED] in scoring the Appellant when their LOC assessment was completed early in the day. Accordingly, the doctor's visit and order changes completed later on that same date, [REDACTED] were not counted in the LOC determination. While this is concerning, in this case it would not have changed the outcome. Even if the [REDACTED] doctor's visit and order changes that date were counted, this would not have been sufficient for the Appellant to meet the criteria for Door 3 of the LOC. (MDS Nurse and MPRO Nurse Reviewer Testimony; Exhibits B and C)

The Appellant's daughter testified she believes the Appellant has debilitating weakness during any activity. The Appellant's daughter explained that the Appellant is exhausted after she does something. Some days when the Appellant's daughter comes to visit, the Appellant is listless, stays in bed and does not want to do anything. The Appellant's daughter also asserted that some things may not have been documented by the nursing facility. However, the Appellant's daughter acknowledged that the Appellant does not ask for help sometimes when she needs it and that the Appellant tells her daughter things she does not share with the nursing facility staff. (Daughter Testimony) The MPRO review is a paper review of records from the nursing facility. The MPRO Nurse Reviewer testified that there was nothing documented in the records from the nursing facility to establish that the Appellant met the exception criteria for performance impacted by consistent shortness of breath, pain or debilitating weakness during any activity. It appears that the documentation MPRO received for review from the nursing facility did not document any shortness of breath or debilitating weakness. These records indicated the Appellant is on a pain medication schedule, when asked denied pain, but was noted to be confused and in pain. However, it does not appear that the pain was documented in relation to performing any activity. (MPRO Nurse Reviewer Testimony; Exhibit C)

The Appellant's daughter testified that the Appellant is a high risk for falls. (Daughter Testimony) Indeed the MDS Nurse testified the Appellant had a fall in ██████████ (MDS Nurse Testimony) However, the ██████████ fall was more recent than the time frame that can be considered for the action at issue in this appeal. This ALJ understands the very serious concerns related to falls, but there was no evidence of any falls within the time periods under review for the ██████████ LOC assessment and exception review.

The Appellant's daughter credibly testified that the Appellant would not be able to manage her medications with the receipt of medication set up services. The Appellant is legally blind and has clumsy hands. The Appellant cannot see a clock on the wall and would not be able to see pills to identify them by color or type nor would she be able to pick up any dropped pills. (Daughter Testimony) However, the Exception Process criterion requires documentation that there has been a trial of the Appellant managing her medications with set up services. (Exhibit D and MPRO Nurse Reviewer Testimony) This ALJ is limited to reviewing whether or not the Appellant met the Department's criteria and does not have any authority to change or override the criteria. While the Appellant's daughter explained that the nursing facility would never attempt such a trial because it is clear that the Appellant would not be able to manage her medications with set up services, the Appellant cannot meet this exception criterion because it is uncontested that there has been no trial with medication set up services.

The Appellant's daughter also testified that the Appellant has been to the ER a few times since her admission. (Daughter Testimony) However, the exception criterion regarding ER visits utilizes the same ██████ day look back period as Door 3 of the LOC assessment. (Exhibit D and MPRO Nurse Reviewer Testimony) It was uncontested

***** 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.