

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. 2013-56785 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 on ██████████ Appellant's Authorized Representative, ██████████, appeared and testified on Appellant's behalf. ██████████ appeared and testified as a witness on Appellant's behalf. ██████████ LTC Program Policy Specialist, represented the Department of Community Health (Department). ██████████ ██████████, appeared and testified as a witness on behalf of the Department.

ISSUE

Did the Department properly determine that Appellant does not require a Medicaid reimbursable 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 was a resident at ██████████ at all times relevant to this matter.
2. On ██████████, ██████████ assessed Appellant's medical/functional condition, using the Michigan Medicaid Nursing Facility Level of Care Determination and determined that Appellant met the Nursing Facility Level of Care criteria. (Department Exhibit B)

3. On [REDACTED] conducted a subsequent Level of Care Determination (LOCD) for Appellant based on medical/functional improvement and determined that Appellant did not meet the Medicaid nursing facility eligibility criteria for Doors 1 through 7, and, therefore, she was no longer eligible to receive Medicaid reimbursable services in a nursing facility. (Department Exhibit C)
4. On [REDACTED] the Department sent an Advance Action Notice to Appellant, advising her that she no longer qualifies for a nursing facility level of services based on the Michigan Medicaid LOCD. (Department Exhibit D)
5. Appellant's request for hearing was received by the Michigan Administrative Hearing System (MAHS) on [REDACTED]

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.

The Michigan Department of Community Health (MDCH) implemented functional/medical eligibility criteria for Medicaid nursing facilities. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

There are five necessary components for determining eligibility for Medicaid nursing facility reimbursement:

- Verification of financial Medicaid eligibility
- PASARR Level I screening
- Physician-written order for nursing facility services
- A determination of medical/functional eligibility based upon a web-based version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online at the time the resident was either Medicaid eligible or Medicaid pending and conducted within the timeframes specified in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter.

- Computer-generated Freedom of Choice (FOC) form signed and dated by the beneficiary or the beneficiary's representative.

*Medicaid Provider Manual (MPM) §5
Nursing Facility Coverages, January 1, 2013.*

The MPM, [Nursing Facility Eligibility and Admission Section] lists the policy for admission and continued eligibility processes for Medicaid-reimbursed nursing facilities. This process includes a subsequent or additional web-based LOCD upon determination of a significant change in the beneficiary's condition as noted in provider notes or minimum data sets and that these changes may affect the beneficiary's current medical/functional eligibility status. (Emphasis supplied) See MPM 5.1.D

Section 5.1.D.1 further references the use of an online Level of Care Determination (LOCD) tool.

The LOCD is required for all Medicaid-reimbursed admissions to nursing facilities. A subsequent LOCD must be completed when there has been a significant change in condition that may affect the NF resident's current medical/functional eligibility status.

The Michigan Medicaid Nursing Facility LOC Determination's medical/functional criteria include seven domains of need:

- Activities of Daily Living,
- Cognition,
- Physician Involvement,
- Treatments and Conditions,
- Skilled Rehabilitative Therapies, Behavior, and
- Service Dependency.

Individual residents or their authorized representatives are allowed to appeal either a determination of financial ineligibility to the Department of Human Services or medical/functional eligibility to the Department of Community Health:

APPEALS – Medical/Functional Eligibility

A determination by the web-based Michigan Medicaid Nursing Facility LOC Determination that a Medicaid financially pending or Medicaid financially eligible beneficiary is not medically/functionally eligible for nursing facility services is an adverse action. If the Medicaid financially pending or Medicaid financially

eligible beneficiary or their representative disagrees with the determination, he has the right to request an administrative hearing before an administrative law judge...

MPM, §5.2.A, Nursing Facility Coverages, January 1, 2013.

Appellant was a Medicaid beneficiary who was a resident of [REDACTED] at all times relevant to this matter. On [REDACTED] [REDACTED] conducted a second LOCD for Appellant based on medical/functional improvement and determined that Appellant did not meet the Medicaid nursing facility eligibility criteria for Doors 1 through 7, and, therefore, was no longer eligible to receive Medicaid reimbursable services in a nursing facility.

The Level of Care Assessment Tool consists of seven service entry Doors. (Department Exhibit F). The doors are: Activities of Daily Living, Cognition Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, and Service Dependency. In order to be found eligible for Medicaid Nursing Facility placement the Appellant must meet the requirements of at least one Door. According to the Department, Appellant met the Nursing Facility Level of Care Criteria prior to the review in [REDACTED] because she needed supervision with mobility and toilet use; she required limited assistance with transferring; and she was independent with eating. Appellant had previously qualified under Door 1. In [REDACTED] it was determined that Appellant no longer met the LOC criteria based on the following reasons:

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

At the time the LOCD was completed in ██████████ it was determined that Appellant was independent with bed mobility, eating, and toilet use; and she required supervision with transferring. Appellant did not provide the necessary evidence to establish that her scores under this Door were incorrect. Therefore the Department correctly concluded that the Appellant does not qualify under 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."

At the time the LOCD was completed in ██████████ it was determined that Appellant's short-term memory was okay; her cognitive skills for daily decision making were modified independent; and that she was able to make herself understood. Appellant failed to rebut the Department's evidence. As such, Appellant did not qualify under 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 Physicians Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physicians Order changes in the last 14 days.

The Department established that Appellant did not have any physician exam visits or physician order changes within ████████ days of the assessment. Appellant did not dispute the Department's determination. As such, Appellant did not qualify under Door 3.

Door 4
Treatments and Conditions

The Department representative testified that in order for the Appellant to qualify under Door 4, the Appellant must meet the treatment and conditions requirements for Door 4. In order to qualify under Door 4, the Appellant 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

The Department provided evidence that the Appellant did not receive treatment for nor demonstrate any of the health conditions required to qualify under Door 4 within █ days of the assessment date. Further, Appellant failed to provide any evidence that she had any qualifying treatment or condition under Door 4. Therefore, the Department's Door 4 eligibility determination was correct.

Door 5
Skilled Rehabilitation Therapies

The Department testified that to qualify under Door 5 an applicant had to have medical documentation of receiving Speech, Occupational or Physical Therapy within seven days of assessment. Specifically, 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.

The Department provided evidence that the Appellant had not received any Skilled Rehabilitation Therapy within █ days of the date of the assessment, and Appellant did not dispute this evidence. Therefore, the Department properly concluded that the Appellant did not qualify under Door 5.

Door 6
Behavior

The Appellant may qualify under Door 6 if certain behaviors were displayed during the seven days before the assessment. Exhibit 1/ Attachment I provides a listing of behaviors recognized under Door 6. The Department provided evidence that the Appellant did not exhibit any of the following behavior symptoms during the [REDACTED] days before the assessment: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, or Resists Care. The Department also testified that the Appellant did not exhibit any of the following Problem Conditions during the [REDACTED] days before the assessment: Delusions or Hallucinations. Appellant would qualify under Door 6 if the Appellant had a score under 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.

The Department testified that the Appellant did not score under either of the two possible categories, and Appellant failed to establish otherwise. Therefore, the Department correctly determined that the Appellant did not qualify under Door 6.

Door 7
Service Dependency

Scoring Door 7: The applicant must be a current participant and demonstrate service dependency under Door 7.

The LOC Determination provides that the Appellant could qualify under Door 7 if she 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.

Appellant had the burden of establishing by a preponderance of evidence that she meets the level of care eligibility criteria for Medicaid nursing facility services. Appellant's representative and witness testified that Appellant cannot do anything by herself. They testified that Appellant will not eat, use the bathroom without assistance, or clean; and Appellant cannot see and has a bad memory. However, Appellant failed to establish by a preponderance of the evidence that

