

**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. 2013-58279 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 ██████████ ██████████ son and Power of Attorney, represented the Appellant. ██████████ Long Term Care Program Policy Specialist, represented the Department. ██████████ Business Office Manager, ██████████, Clinical Reimbursement Coordinator, ██████████ Social Worker, ██████████, Director of Nursing, and ██████████, Long Term Care Ombudsmen were present at witnesses.

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 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, April 1, 2013, Pages 9-11.*

3. A subsequent LOC must be completed when there has been a significant change in condition as noted in the provider's nursing notes or Minimum Data Set and that significant change in condition may affect the beneficiary's current medical/functional eligibility status. *Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2013, Page 11.*
4. On ██████████ the Appellant was initially assessed under the LOC assessment tool and was found to be eligible for nursing facility placement through Door 1, Activities of Daily Living (“ADLs”). (Exhibit B)
5. On ██████████, the Appellant was re-assessed under the LOC assessment 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)
6. On ██████████, the Appellant was notified of the Department action. (Hearing Summary)
7. On ██████████, the Michigan Administrative Hearing System received the Appellant’s Request for Hearing. (Exhibit D)

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, April 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, April 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, April 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 E)

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

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.

(Exhibit E, pages 1-3)

For the ██████████ LOC assessment, the Appellant was scored as independent for eating, bed mobility, transferring and toilet use. (Exhibit C)

The Appellant's son asserted that a one week evaluation period is not representative of the Appellant's status. The Appellant has been on a sliding scale for her insulin for years. Some weeks are good and some weeks the Appellant needs assistance. Recently the Appellant's sugar dropped very low and the nurses told her to stay in bed and to ring to get assistance for walking, going to the bathroom, etc. This has happened repeatedly. (Son Testimony)

As the Long Term Care Program Policy Specialist stated during the telephone hearing proceedings, whenever there has been a significant change in condition as noted in the provider's nursing notes or Minimum Data Set and that significant change in condition may affect the beneficiary's current medical/functional eligibility status, the nursing facility should conduct a new LOC assessment. (*Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2013, Page 11*; Long Term Care Program Policy Specialist Testimony) Accordingly, if there was a change from being independent with the ADLs considered under Door 1 to needing assistance with one of these activities, such as toileting, the nursing facility should have completed a new LOC assessment.

However, this hearing is limited to reviewing the Department's determination based on the ██████████ LOC assessment under the above cited policy, including the specified look back periods. For Door 1 the look back period is only ████████ days. This Administrative Law Judge does not have any authority to change the policy nor to grant any exceptions from the policy.

The Appellant's son's testimony indicated there are times when the Appellant requires assistance with ADLs considered under Door 1, such as toilet use. However, the evidence is not sufficient to establish that the Appellant needed assistance with any of the ADLs considered under Door 1 during the ████████ days prior to ██████████. Accordingly, the Appellant scored 4 points, which is not sufficient to qualify through 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."

(Exhibit E, pages 3-4)

The Appellant was scored as short term memory okay, independent with cognitive skills, and able to make herself understood. (Exhibit C) The Clinical Reimbursement Coordinator explained that a Brief Interview for Mental Status (BIMS) was completed to assess this Door and the Appellant scored 13 out of 15. As explained by the Clinical Reimbursement Coordinator, the BIMS considers the same aspects of short term memory and cognitive function as the criteria for Door 2 outlined in the *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines*. (Clinical Reimbursement Coordinator Testimony; Exhibit F pages 6-10)

The Appellant's son testified that the Appellant's long term memory is excellent but her short term memory comes and goes. Sometimes the Appellant does not recognize her son and thinks he is his father. Sometimes the Appellant forgets what she was going to say mid-sentence. The Appellant's son also stated that two physicians have evaluated the Appellant and feel she is not competent to make medical decisions and that moving her from the nursing facility would be detrimental. One physician even stated that if the Appellant is moved she will likely pass away in six months. The Appellant's son had letters from the physicians dated ██████████ and ██████████ (Son Testimony)

As explained during the telephone hearing proceedings, the hearing record was not left open to allow the ██████████ letters from the physicians to be submitted because they are too recent. The LOC assessment at issue was completed ██████████

The Long Term Care Ombudsman met with the Appellant for ██████ minutes, during which time the Appellant repeated the same story ██████ times. However, the Long Term Care Ombudsman did not fault the facility and testified that the Appellant can present as very cognitively intact. (Long Term Care Ombudsman Testimony)

The Appellant's son's testimony indicates the Appellant has some issues with short term memory at times and that her doctors recently documented their feelings that the Appellant cannot make medical determinations. However, at the time of the LOC assessment at issue, the Appellant's score on the BIMS did not reflect these impairments. The evidence was not sufficient to establish that the Appellant met the criteria to qualify through Door 2 at the time of the ██████████ LOC assessment.

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.

(Exhibit E, pages 4-5)

The Appellant was scored as having one physician visit exam and three physician order changes during the ██████ day review period for the ██████████ LOC assessment. (Exhibit C)

The Appellant's son noted that the Appellant has been on a sliding scale for her insulin for years. Accordingly, the insulin dosage frequently changes. (Son Testimony)

As stated in the *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines*:

A sliding scale dosage schedule that is written to cover different insulin dosages depending on laboratory values does not count as an order change simply because a different dose was administered based on sliding scale guidelines.

(Exhibit F page 10)

Accordingly, when there is an ongoing order for insulin to be administered based on a sliding scale, a countable order change would involve the physician ordering a change in the insulin order to something beyond the sliding scale guidelines.

With ██████ physician visit exam and ██████ physician order changes during the relevant review period, the Appellant did not meet the criteria to qualify through Door 3.

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

(Exhibit E, page 5)

The Appellant was scored as not receiving any of the listed health treatments or demonstrating any of the listed health conditions during the relevant time period for the ██████████ LOC assessment. (Exhibit C)

As noted above, the *MDCH Nursing Facility Eligibility Level of Care Determination Field Definition Guidelines* do not allow for insulin administered by sliding scale guidelines to be counted as an order change.

There was no evidence presented indicating the Appellant received any of the specified treatments or demonstrated any of the specified health conditions during the relevant time period to meet the criteria for Door 4 for the ██████████ LOC assessment.

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. (Exhibit E, pages 5-6)

The Appellant was scored as not receiving any skilled therapies during the relevant time period for the ██████████ LOC assessment. (Exhibit C)

No evidence was presented indicating the Appellant received any skilled therapies during the relevant time period to meet the criteria for 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.

(Exhibit E, pages 6-7)

The Appellant was scored as not displaying any of the listed behavioral symptoms or problem conditions during the relevant time period for the ██████████ LOC assessment. (Exhibit C)

The Appellant's son testified that the Appellant has delusions and difficulty at times. Sometimes the Appellant forgets what she is going to say mid-sentence. (Son Testimony)

Door 6 considers problem conditions, including delusional thinking. The Appellant's son stated the Appellant has delusions and difficulty at times. However, the evidence is not sufficient to establish that the Appellant had delusions or hallucinations in the █ days prior to ████, nor that she exhibited any of the listed behaviors at least █ of the █ days prior to June ████. Accordingly, the Appellant did not meet the criteria to qualify through Door 6 at the time of this LOC assessment.

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 E, page 7)

The Appellant had been a participant for at least ██████ year when the ██████ LOC assessment was completed, but the Clinical Reimbursement Coordinator testified that the Appellant does not require ongoing services at this level, a skilled nursing facility. Rather, the ongoing services the Appellant needs to maintain current functional status are available in the community, such as Adult Foster Care or assisted living. (Exhibit C; Clinical Reimbursement Coordinator Testimony) Accordingly, the Appellant could not qualify through Door 7.

The Appellant's son disagrees with the determination and further testified that it will be financially impossible to find alternative placement for the Appellant in the community. The Appellant's son stated that the Appellant's physician's orders for the Appellant to receive nursing facility services should be considered. (Son Testimony)

This ALJ is limited to reviewing whether or not the Appellant met the criteria set out in the Medicaid Provider Manual policy at the time of the ██████ LOC assessment. As stated in the Department policy, a physician order for nursing facility services is required. (*Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2013, Page 8*) However, the physician order is not the only requirement. The Appellant must also meet the LOC assessment criteria to be eligible for Medicaid to cover nursing facility services. (*Medicaid Provider Manual, Nursing Facility Coverages, April 1, 2013, Pages 9-11*) The financial considerations for community placement are not part of the LOC assessment criteria. The Appellant did not qualify through any of the seven Doors on the ██████ LOC assessment. Based on the available information, 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 ██████ LOC assessment. Therefore, the Appellant was not eligible for Medicaid nursing facility services at the time the ██████ LOC assessment was completed.

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 [REDACTED] LOC assessment was completed.

IT IS THEREFORE ORDERED that:

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

/s/
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CL/db

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.