

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. 2013-61763 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 son/POA appeared and testified on the Appellant's behalf. ██████████ LTC Program Policy Specialist represented the Department of Community Health. Her witness was ██████████ R.N., the MDS Coordinator for ██████████

ISSUE

Did the Department properly determine that the 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 (██████████) and current resident of ██████████ (██████████) in ██████████ (Exhibit A, Items B, C and testimony).
2. On ██████████, ██████████ conducted an assessment under the Nursing Facility (NF) Level of Care Determination (LOCD) and determined the Appellant eligible under Door 1 – Activities of Daily Living to receive Medicaid reimbursed services in a nursing facility. (Exhibit A, Item B and testimony).
3. On ██████████, Appellant was assessed again under the NF LOCD and ██████████ found her to be ineligible to receive Medicaid reimbursed services in a nursing facility. (Exhibit A, Item C and testimony).

Docket No. 2013-61763 NHE
Decision & Order

4. On [REDACTED], Appellant's son/POA was issued an Adequate Action Notice by [REDACTED] advising him that the Appellant no longer qualified for Medicaid covered nursing facility level services based on the recent NF LOCD. (Exhibit A, Item E and testimony).
5. On [REDACTED], Appellant's Request for Hearing was received by the Michigan Administrative Hearing System (MAHS). (Exhibit A, Item E and testimony).

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, Nursing Facility Coverages, Section 5 - Beneficiary Eligibility and Admission Process, pp. 7 - 15, July 1, 2013.

The *Medicaid Provider Manual, Nursing Facility Coverages, Section 5 - Beneficiary Eligibility and Admission Process* 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 Medicaid Provider Manual (MPM) Subsection 5.1.D

Subsection 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.2., NF Eligibility, page 14, July 1, 2013.

The Department presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7. ██████████ R.N., the MDS Coordinator

for ██████████ stated that she uses the resident's ADL flow record to complete the LOCD to determine whether the resident is eligible for continued Medicaid covered care in their skilled nursing facility. ██████████ stated that each shift is required to document what assistance a resident is given during that shift. ██████████ used the documented assistance to complete the LOCD.

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 Department's witness from ██████████ determined that Appellant was independent for Bed Mobility, Transfers, Toilet Use, and Eating. ██████████ stated that for the █-day look back period required for Door 1, in this case ██████████ back to ██████████, the Appellant was given zero help with bed mobility, transfers, toilet use, and eating. Accordingly, she did 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."

The Department's witness from ██████████ determined that there was a problem with Appellant's short-term memory, but her cognitive skills for daily decision making were modified independent, and she was able to make herself understood.

██████████ stated the Appellant has a problem with her short term memory, she is modified independent with her daily decisions, but would have difficulty with new tasks given to her. Appellant was given the BIM cognition test and she scored 8 out of 15, which means she has Modified Cognitive Impairment. 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's witness from ██████████ stated she determined the Appellant had only one physician exam visit and two physician order changes within 14 days of the assessment. As such, Appellant did not qualify under 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

The Department's witness from ██████████ stated she determined the Appellant did not meet the criteria listed for Door 4 at the time of the assessment as she had none of the health treatments or conditions listed above.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The Appellant 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.

The Department's witness from ██████████ stated she determined the Appellant did not meet the criteria listed for Door 5 at the time of the assessment. The Appellant was not receiving any skilled rehabilitation therapies within the past █ days.

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.

The Department's witness from ██████████ stated she determined the Appellant did not meet the criteria set forth above to qualify under Door 6. A review of her records showed that she did not exhibit any of the listed behaviors within the █-day look back period.

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.

Here, Appellant had been a nursing facility resident for more than one year, but the Department witness from ██████████ testified that Appellant no longer required a NF

level of care to maintain her current functional status, and there were a number of services and programs available in the community which could meet the Appellant's current needs.

Appellant's son/POA testified he questioned how the Appellant could be independent in be mobility since she had fallen out of bed. He stated he understood she sometimes stays in be the whole day; that she sleeps until one o'clock. Appellant's son did acknowledge the Appellant could get in and out of bed on her own. He also questioned her independence in toileting, he said he understood she could go to the bathroom by herself, but needed help cleaning herself. He also stated the Appellant would not take showers, and needs help bathing and sometimes needs help dressing.

Appellant's son stated Appellant doesn't have a problem with eating. However, when she lived alone she wasn't eating regularly. He stated she does have a memory problem. He stated he did not think the Appellant should be taken off Medicaid, as she is not able to take/manage her medications on her own. Appellant's son stated on a prior occasion the Appellant was found outside the nursing facility late at night, even though she was wearing a bracelet designed to alert the staff if she went outside the facility. He said she has a smoking problem, and once put a lighted cigarette in her pocket. Appellant's son stated the Appellant simply can't live on her own and needs someone around to help her.

The LOCD process is designed to be a snapshot of an individual's condition versus that person's need for Medicaid covered NF services. When the LOCD shows the individual no longer meets the eligibility criteria for nursing facility level of care, other Medicaid covered services should be considered for that individual. The Department's representative pointed out that the Appellant is only receiving non-skilled care at ██████████, mostly housing and meals, and she does not require Medicaid covered nursing facility care. The Department's representative did acknowledge that the Appellant remained financially eligible for Medicaid covered services, but stated her current needs can be met through Medicaid covered services available in the community.

Based on the evidence presented the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on the review conducted ██████████. The undersigned ALJ finds that the Appellant failed to meet her burden of proving that the Department erred in reviewing her medical/functional eligibility status. The Appellant does not require Medicaid reimbursed NF level of care as demonstrated by the application of the LOCD tool.

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 does not require a Medicaid Nursing Facility Level of Care.

[REDACTED]
Docket No. 2013-61763 NHE
Decision & Order

IT IS THEREFORE ORDERED that:

- The Department's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/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.