

**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.** 2013-66148 NHE

██████████

██████████

██████████

Appellant

\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon a request for hearing filed on behalf of Appellant.

After due notice, a hearing was held on ██████████ ██████████ Appellant's daughter and legal guardian, appeared and testified on Appellant's behalf. ██████████, Long Term Care Program Policy Specialist, represented the Department of Community Health. ██████████ from the ██████████ testified as a witness for the Department.

**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 a ██████ year-old Medicaid beneficiary who has been diagnosed with Alzheimer's disease. (Respondent's Exhibit B, page 1; Testimony of Appellant's representative).
2. Appellant became a resident at ██████████ ██████████, a long-term care facility, through Medicaid in ██████████ (Testimony of ██████████).
3. Medicaid policy requires that nursing facility residents meet the outlined medical/functional criteria for nursing facility services on an ongoing basis. (Medicaid Provider Manual (MPM), April 1, 2013 version, Nursing Facility Chapter, pages 7-16).

4. At the time of his admission, a Nursing Facility Level of Care Determination (LOCD) was performed and it was determined that Appellant met the criteria for a nursing facility level of care by passing through Door 1 of the LOCD. (Respondent's Exhibit B, page 1).
5. However, on ██████████, another LOCD was performed and Appellant was found to be ineligible for nursing facility placement based upon his failure to qualify via entry through any one of the seven doors during the applicable look-back period. (Respondent's Exhibit C, page 1).
6. Appellant and his guardian were advised of the Department's action via an Advance Negative Action Notice. (Testimony of ██████████)
7. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing, along with letters of guardianship, filed by Appellant's guardian on his behalf. (Petitioner's Exhibit 1, pages 1-4; Respondent's Exhibit D, pages 1-4).

### **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, April 1, 2013 version, Nursing Facility Chapter, pages 7-16).

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, April 1, 2013 version, Nursing Facility Chapter, pages 9-11).

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, April 1, 2013 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 at that time

Appellant and his representative bear the burden of proving by a preponderance of the evidence that the Department erred in finding that he did not pass through any of the doors.

Regarding Door 1, the LOCD tool states:

**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

*Respondent's Exhibit E, page 3*

Here, while Appellant previously passed through Door 1 at the time he was admitted to the nursing facility, it is undisputed that his condition improved following that admission and that he no longer passes through Door 1 of the LOCD. (Respondent's Exhibit B, page 1; Respondent's Exhibit C, page 1; Testimony of Appellant's representative; Testimony of [REDACTED])

Regarding Door 2, the LOCD tool states:

**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.”

*Respondent’s Exhibit E, page 4*

Here, Appellant was scored as short term memory okay, independent with cognitive skills, and able to make himself understood. (Respondent’s Exhibit C, page 1).

Appellant’s representative, on the other hand, testified that Appellant does have memory issues and only appears to be okay in that area due to the structured environment at the facility. She also testified that the structured living environment also makes Appellant’s cognitive skills appear better than they are and that, if living alone, Appellant would make poor decisions, become angry, and become confused. (Testimony of Appellant’s representative).

However, while ██████████ testimony confirmed that Appellant is doing well in the structured environment of the facility, she also credibly testified that Appellant passed a Mini Mental State Examination, getting ██████ out of ██████ questions correct; was alert and oriented to person, place, and time; was able to recall ██████ words when words were read to him; could comprehend a written sentence and copy a design; and could perform subtraction. (Testimony of ██████████)

Given ██████████ credible testimony regarding Appellant’s abilities and the Door 2 assessment completed during the LOCD, the Department properly found that Appellant did not pass through Door 2.

Regarding Door 3, the LOCD tool states:

**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.

*Respondent's Exhibit E, page 5*

Here, Appellant was scored as having zero physician visits or orders in the █ days prior to the █ LOCD. (Respondent's Exhibit C, page 1). Appellant's representative does not dispute those findings and, based on the undisputed findings, Appellant did not pass through Door 3.

Regarding Door 4, the LOCD tool states:

**Door 4**  
**Treatments and Conditions**

**Scoring Door 4:** The applicant must score "yes" in at least one of the nine categories and have a continuing need to qualify under Door 4.

The nine categories of Door 4 include:

- 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

*Respondent's Exhibit E, page 5*

Here, 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 ██████████ LOCD. (Respondent's Exhibit C, page 1). Appellant's representative does not dispute those findings and Appellant clearly did not pass through Door 4.

Regarding Door 5, the LOCD tool states:

**Door 5**  
**Skilled Rehabilitation Therapies**

Scoring Door 5: The applicant must have required at least 45 minutes of active [Speech Therapy], [Occupational Therapy] or [Physical Therapy] (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5

*Respondent's Exhibit E, page 6*

Here, is undisputed that Appellant did not require any of the therapies specified through Door 5 and that he did not pass through that door. (Respondent's Exhibit C, page 1; Testimony of Appellant's representative; Testimony of ██████████).

Regarding Door 6, the LOCD tool states:

**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.

*Respondent's Exhibit E, page 7*

Here, Appellant's representative testified that Appellant does wander and that, due to that wandering, the facility has him wear a bracelet that would alert staff if he left the facility. (Testimony of Appellant's representative).

██████████ confirmed that Appellant wears a “WanderGuard” bracelet, but also testified that Appellant had no incidents of wandering in the week prior to the ██████████ LOCD and was therefore scored a zero in that behavior. (Testimony of ██████████. Moreover, as noted by ██████████, simply trying to leave the facility does not necessarily constitute wandering under the applicable guidelines:

Wandering describes those applicants who move about (in or out of doors) with no discernible, rational purpose. Individuals who wander may be oblivious to their physical or safety needs. Wandering behavior should be differentiated from purposeful movement (i.e., a hungry applicant moving about the apartment in search of food). Wandering may be by walking or by wheelchair. Do not include pacing as wandering behavior. Wandering can occur indoors or out of doors.

*Respondent’s Exhibit F, pages 13-14*

Given those guidelines, in addition to complete lack of evidence regarding any incidents of wandering during the relevant look-back period, the Department properly determined that Appellant did not pass through Door 6 at the time the ██████████ LOCD.

Regarding Door 7, the LOCD tool states:

**Door 7**  
**Service Dependency**

**Scoring Door 7:** The applicant must be a current participant [for at least one year] and demonstrate service dependency to qualify under Door 7.

*Respondent’s Exhibit E, page 7*

Here, Appellant was not a program participant for at least a year at the time of the applicable LOCD and, consequently, he did not pass through Door 7. (Respondent’s Exhibit C, page 1; Testimony of ██████████

Therefore, for the reasons discussed above, this Administrative Law Judge finds that Appellant failed to meet his burden of proving that the Department erred in finding that he did not pass through any of the seven doors of the LOCD at the time of the ██████████ LOCD.

**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 Appellant did not meet the criteria for a Medicaid Nursing Facility Level of Care.

**IT IS THEREFORE ORDERED** that:

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

*Steven Kibit*

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.