

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

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**IN THE MATTER OF:**

**Docket No. 14-007212 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 mother and authorized hearing representative, appeared and testified on the Appellant's behalf. ██████████ with ██████████, which provides the Long Term Care Ombudsman services for ██████████ County, also testified for the Appellant. Appellant was present but did not testify.

██████████, LTC Program Policy Specialist with the Department of Community Health appeared on behalf of the Department. ██████████, Administrator, ██████████ ██████████); and, ██████████, R.N., PACER Project Manager with MPRO testified on behalf of the Department.

**ISSUE**

Did the Department properly determine that the Appellant did 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 (DOB ██████████) and current resident of ██████████. (Exhibit A, Items B, C and testimony).
2. On ██████████ conducted an assessment of the Appellant under the Nursing Facility (NF) Level of Care Determination (LOCD) and found Appellant eligible to receive Medicaid reimbursed services in a nursing facility under Door 2 – Cognition. (Exhibit A, Item B and testimony).

3. On ██████████ conducted another assessment of the Appellant under the Nursing Facility (NF) Level of Care Determination (LOCD) based on a significant change in condition and found the Appellant ineligible to receive Medicaid reimbursed services under any of the doors on the LOCD. (Exhibit A, Item B and testimony).
4. On ██████████, LPN, MDS Coordinator with ██████████ contacted the Michigan Peer Review Organization (MPRO) and requested a NFLOC Exception review. (Exhibit A, Items D & E and testimony).
5. On ██████████ based upon the NFLOC Exception criteria, MPRO determined the Appellant did not meet the review criteria. On ██████████ MPRO issued the Appellant an adverse notice. (Exhibit A, Item F and testimony).
6. On ██████████, Appellant's Request for Hearing was received by the Michigan Administrative Hearing System (MAHS). (Exhibit A, Item G 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, §5 Beneficiary Eligibility and Admission Process, p. 7 January 1, 2014*].

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 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:

### **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. . . . *Medicaid Provider Manual, §5.2.A.2., Nursing Facility Coverages*, p. 14, January 1, 2014.

T ██████████ Administrator for ██████████ established that based on staff observations and interviews of the Appellant, a review of the Appellant's chart, the notes from the nurses and nurse aides, and the doctor's progress notes, the Appellant did not meet any of the criteria for Doors 1 through 7. Traci Doult, LPN and MDS Coordinator for ██████████ completed a LOCD on ██████████ and determined the Appellant was not eligible for Medicaid covered care in their skilled nursing facility.

**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 ██████████, Administrator for ██████████ stated that they determined the Appellant was independent for Bed Mobility, Transfers and Eating. Accordingly, Appellant 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 ██████████, Administrator for ██████████ determined the Appellant had no short term memory problems, she could make herself understood, and her cognitive her skills were independent. ██████████ stated they used the BIMS assessment to determine the Appellant's cognitive ability and she scored 15 out of 15 indicating she was fully cognitive. 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 ██████████, Administrator for ██████████ determined the Appellant had one physician visits and no 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 ██████████, Administrator for ██████████ 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. ██████████ did acknowledge that the Appellant was on daily insulin, but there were no order changes with the 14 day look back period. Thus, she did not qualify under Door 4.

**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 ██████████ Administrator for ██████████ 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 7 days, and did not have any scheduled. Thus, she did not 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.

The Department's witness ██████████, Administrator for ██████████ found 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 7-day look back period. Thus, she 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.

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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, the Appellant had not been continually served by [REDACTED], a Medicaid reimbursed nursing facility, the MI Choice program, or the PACE program for at least one year. The Department's witness [REDACTED] established that the Appellant was first admitted to [REDACTED] on [REDACTED], however, there were times when she was discharged and then readmitted to [REDACTED]. For example, on [REDACTED], Appellant was discharged from [REDACTED] and then readmitted on [REDACTED]. Accordingly, Appellant did not qualify under Door 7.

**Exception Process**

[REDACTED], R.N., PACER Project Manager with MPRO testified and provided documentation that MPRO received the NF Exception Review request from [REDACTED], LPN, MDS Coordinator with [REDACTED] on [REDACTED] (Exhibit A, Item D and testimony).

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, 2014, p. 12].

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The exception process considers frailty, behaviors and treatments. ██████████  
██████████ R.N., PACER Project Manager with MPRO testified she received a request for an NFLOC Exception review from ██████████, LPN, MDS Coordinator with ██████████ on ██████████ went through each of the exception criteria in detail with Nurse ██████████. The Appellant did not meet any of the exception criteria based on the medical records provided by the nursing facility. (Exhibit A, Items D-F and testimony).

For the frailty categories, 1001, for toilet use, transfers, and bed mobility Nurse ██████████ stated they look at how long it takes the Appellant to get out of a chair and transfer. Nurse ██████████ found that it took Appellant no time to get out of a chair or transfer. Also no assistance was needed for ADLs. Appellant was incontinent of bladder and occasionally incontinent of bowel. Nurse ██████████ found that the Appellant uses a walker in her room; and, self propels herself in a wheelchair in the hall. For 1002, Nurse found that there was no documented consistent shortness of breath, pain, or debilitating weakness. For 1003, there was one fall reported. Nurse ██████████ found the Appellant was reaching for a can on the floor and she slipped on liquid from the can. There was no associated dizziness, lightheadedness, or gait problems associated with the fall.

For 1004, Nurse ██████████ found that the Appellant takes ██████████ medications; she has standard bowel care; all of her medications are provided by the facility; and, while she can't see to draw up her insulin she could give it to herself if drawn for her. For 1005, there were no weight changes; all her meals were provided by the facility; and the Appellant eats in the dining room. For 1006, Nurse ██████████ found that there were no physician visits; no ER visits; and, no order changes within the past ██████████ days.

For the Behavior categories, 2001-2004 Nurse ██████████ found that the Appellant had no wandering, no verbal or physical abuse, and no socially inappropriate behaviors documented. For 3000, Nurse ██████████ stated the Appellant's medical records did not show that she resisted care, or that there was a need for any complex treatments or nursing care. Since the Appellant did not meet the criteria for an exception, MPRO upheld the denial decision and Ms. ██████████ stated she sent a letter to the Appellant and ██████████ to advise that the facility's decision was upheld. (Exhibit A, Items D-F).

Appellant's mother testified that the Appellant is on heavy doses of insulin, that she is a brittle diabetic, and was unable to control her blood sugar. She said the Appellant does suffer from shortness of breath, she has some weakness, and it is hard for the Appellant to walk into the doctor's office. Appellant's mother said the Appellant falls easily, her balance is off, and her knee gives out. Appellant's mother said the Appellant needs a nurse. She has cellulitis, and has been hospitalized for the cellulitis. Appellant's mother said the Appellant's legs are red and very swollen.

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 does not meet the eligibility criteria for nursing facility level of care, the individual must be discharged from the nursing facility and other Medicaid covered services should be

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considered for that individual. The Appellant may be financially eligible for Medicaid covered services, but her current needs may be met through Medicaid covered programs and services available in the community.

Based on the evidence presented the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on [REDACTED]. The MPRO Exception Review also upheld that determination. 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 as of [REDACTED]. The preponderance of the evidence in this case shows that the Appellant did not require Medicaid reimbursed NF level of care as demonstrated by the LOCD completed on [REDACTED].

**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 require a Medicaid Nursing Facility Level of Care as demonstrated by the application of the LOCD tool on [REDACTED].

**IT IS THEREFORE ORDERED** that:

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

*William D Bond*

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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.