

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 14-007816 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 Appellant's request for hearing.

After due notice, a hearing was held on ██████████, Appellant's sister, appeared and testified on Appellant's behalf. ██████████, Long Term Care Program Policy Specialist, represented the Michigan Department of Community Health ("MDCH" or "Department"). ██████████, a registered nurse and project manager at the Michigan Peer Review Organization ("MPRO"), testified as a witness for the Department. ██████████ MDS Nurse; ██████████, biller; ██████████, physical therapy assistant; and ██████████, occupational therapy assistant; from the ██████████ nursing care facility(██████████") also testified as witnesses for the Department.

ISSUE

Did the Department properly determine that the Appellant did not require Medicaid nursing facility level of care on ██████████

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 a cerebral vascular accident; hypertension; coronary artery disease; depression; atrial fibrillation; gastroesophageal reflux disease; anemia; osteoarthritis; hyperlipidemia; and chronic obstructive pulmonary disease. (Respondent's Exhibit B, page 1; Respondent's Exhibit D, page 1).
2. On or about ██████████, Appellant was admitted as a resident at ██████████. (Testimony of ██████████).

3. On ██████████ conducted a Michigan Medicaid Nursing Facility Level of Care Determination (“LOCD”) and determined that Appellant was eligible to receive Medicaid reimbursable services at the facility because she passed through Door 5 of the LOCD tool. (Respondent’s Exhibit B, page 1).
4. On or about ██████████, Appellant was discharged from the facility to her home. (Testimony of ██████████).
5. Subsequently, Appellant suffered a cerebral vascular accident. (Testimony of Appellant’s representative; Testimony of ██████████).
6. On or about ██████████, Appellant was readmitted to ██████████ and another LOCD was performed. (Testimony of ██████████ Testimony of ██████████).
7. In that second LOCD, Regency determined that Appellant was eligible to receive Medicaid reimbursable services at the facility because she passed through Door 1 of the LOCD tool. (Testimony of ██████████).
8. After being readmitted, Appellant received assistance and skilled therapies through ██████████ (Testimony of Appellant’s representative; Testimony of ██████████).
9. Appellant’s condition then improved, her skilled therapies were completed, and the only assistance she continued receiving was custodial care. (Testimony of Wurmlinger).
10. On ██████████, Appellant was again assessed under the LOCD evaluation tool, but this time she was found to be ineligible for Medicaid nursing facility care based upon her failure to qualify via entry through one of the seven doors of that tool. (Respondent’s Exhibit C, page 1).
11. The facility then contacted MPRO and requested a nursing facility level of care exception. (Testimony of ██████████).
12. MPRO reviewed Appellant’s case on ██████████ and determined that Appellant did not meet the criteria for an exception. (Respondent’s Exhibit E, page 1; Testimony of ██████████).
13. That same day, MPRO also issued a written notice to the Appellant stating that she no longer qualified for Medicaid nursing facility level services and her services would be terminated in ██████ days from the date of the notice. (Respondent’s Exhibit F, page 1).

14. On ██████████, the Michigan Administrative Hearing System received the Request for Hearing filed in this matter. (Petitioner's Exhibit 1, pages 1-2; Respondent's Exhibit G, page 1).
15. While the appeal was pending, Appellant suffered a fall and broke her back. (Testimony of Appellant's representative; Testimony of ██████████).
16. Since that fall, Appellant's need for assistance has increased and she has been receiving skilled therapies. (Testimony of ██████████).
17. Regency also performed another LOCD on ██████████ and found that Appellant is again eligible to receive Medicaid reimbursable services at the facility because she passed through Door 1 of the LOCD tool. (Testimony of ██████████).

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 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, describes the policy and process for admission and continued eligibility, as well as functional/medical criteria requirements, for Medicaid-reimbursed nursing facility, MI Choice, and PACE services. (MPM, April 1, 2014 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, 2014 version, Nursing Facility Chapter, pages 9-12).

A subsequent LOCD must be completed when there has been a significant change in condition that may affect the resident's current medical/functional eligibility status and a nursing facility resident must meet the outlined criteria on an ongoing basis. (MPM, April 1, 2014 version, Nursing Facility Chapter, page 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, 2014 version, Nursing Facility Chapter, page 11).

The ██████████ 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:

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

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."

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.

Door 4
Treatments and Conditions

Scoring Door 4: The applicant must score “yes” in at least one of the nine categories above [Stage 3-4 pressure sores; Intravenous or parenteral feedings; Intravenous medications; End-stage care; Daily tracheostomy care, daily respiratory care, daily suctioning; Pneumonia within the last 14 days; Daily oxygen therapy; Daily insulin with two order changes in last 14 days; Peritoneal or hemodialysis] and have a continuing need to qualify under Door 4.

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.

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.

Door 7
Service Dependency

Scoring Door 7: The applicant must be a current participant [and has been a participant for at least one (1) year] and demonstrate service dependency under Door 7.

In this case, ██████████ and the Department determined that Appellant did not pass through any of the 7 Doors on ██████████ and was therefore ineligible for Medicaid nursing facility level of care.

Given the LOCD and the testimony during the hearing, it is clear that the findings regarding the doors must be affirmed. While Appellant was receiving some custodial care at the time of the LOCD, she was not receiving any assistance related to the tasks identified in Door 1. Similarly, while Appellant has medical problems, none of her conditions or behaviors met the criteria for passing through Doors 2, 4 or 6, and the medical treatment Appellant was receiving did not reach the levels required by Doors 3, 4, or 5. Additionally, with respect to Door 7, Respondent properly noted that Appellant had not been a program participant for over a year and, consequently, did not qualify through that door.

In response, Appellant's representative argued that ██████████ erred by not properly assessing Appellant when she entered the facility on ██████████. According to Appellant's representative, ██████████ did not perform a LOCD at that time and, instead, relied on the previous LOCD performed in ██████████, despite the fact that Appellant had now suffered a stroke and that her needs and conditions were much different from the first time she was admitted.

The Department's witnesses testified that a new LOCD was performed on ██████████, but no such LOCD was submitted as evidence.

Nevertheless, even if it is true that no new LOCD was performed when Appellant was readmitted to the facility, that failure is irrelevant to this case. It is undisputed that Appellant met the criteria to receive Medicaid reimbursable services at the time she was readmitted to the facility and it is only the subsequent ██████████ LOCD that is at issue in this case. A nursing facility resident must meet the outlined criteria on an ongoing basis and it does not matter how Appellant was previously found to be eligible, it only matters if she still met the criteria on ██████████.

Therefore, given the above findings and the irrelevancy of any past determinations, the undersigned Administrative Law Judge concludes that the facility and Department properly determined that Appellant did not pass through any of the 7 Doors of the LOCD tool on ██████████.

In addition to challenging the LOCD, Appellant also indicated disagreement with MPRO's exception decision. The Department's general policy related to level of care exception eligibility for nursing facility services is found in the MPM:

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.

*MPM, April 1, 2014 version
Nursing Facility Chapter, page 12*

The Nursing Facility Level of Care Exception Process criteria is set forth below:

Applicants who exhibit the following characteristics and behaviors may be admitted to programs requiring the Nursing Facility Level of Care definition. An applicant need trigger only one element to be considered for an exception.

Frailty

The applicant has a significant level of frailty as demonstrated by at least one of the following categories:

- Applicant performs late loss ADLs (bed mobility, toileting, transferring and eating) independently but requires an unreasonable amount of time
- Applicant's performance is impacted by consistent shortness of breath, pain or debilitating weakness during any activity

- Applicant has experienced at least two falls in the home in the past month
- Applicant continues to have difficulties managing medications despite the receipt of medication set up services
- Applicant exhibits evidence of poor nutrition, such as continued weight loss, despite the receipt of meal preparation services
- Applicant meets criteria for Door 3 when emergency room visits for clearly unstable conditions are considered

Behaviors

The applicant has at least a one month history of any of the following behaviors, and has exhibited two or more of any these behaviors in the last seven days, either singly or in combination:

- Wandering
- Verbal or physical abuse
- Socially inappropriate behavior
- Resists care

Treatments

The applicant has demonstrated a need for complex treatments or nursing care.

Respondent's Exhibit E, page 1

Here, the facility completed the LOCD on ██████████ and determined that the Appellant did not qualify. Appellant and the facility subsequently contacted MPRO requesting an immediate review, which was completed that same day.

During the hearing, the MPRO Nurse Reviewer went through each of the exception criteria and the summary notes of the MPRO review. She also explained why MPRO determined that the Appellant did not meet any of the exception criteria based on the information provided.

In response, Appellant's representative argued that the facility should have requested another review for an exception after Appellant broke her back on ██████████.

However, this Administrative Law Judge's jurisdiction is limited to reviewing the Department's decision in light of the information it had at the time it made that decision

and any subsequent changes are therefore immaterial to whether the Department and MPRO acted properly. Moreover, while outside of the scope of this hearing, it does appear that [REDACTED] completed another LOCD on [REDACTED] and that it has determined that Appellant again meets the criteria for Medicaid nursing facility services as of the date of her fall.

Similarly, while the facility's representatives also indicated that, given Appellant's improvement and change in condition, it will soon be performing another LOCD and that it may find that Appellant is again ineligible for a Medicaid nursing facility level of care, any future decisions are also beyond the scope of this hearing. Accordingly, with respect to any future decisions, the undersigned Administrative Law Judge will only note that, if the facility does determine at some point that Appellant no longer requires a Medicaid nursing facility level of care, Appellant could again request an immediate review by MPRO and/or an administrative hearing.

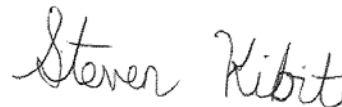
With respect to the issue in dispute in this case, *i.e.* whether Appellant met the criteria for Medicaid nursing facility level of care as of [REDACTED], the Department properly found, based on the information available at the time, that Appellant did not meet the criteria for such care or for a nursing facility level of care exception on [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Appellant did not require a Medicaid nursing facility level of care on [REDACTED].

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge
for Nick Lyon, 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.