

**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. 2014-2362 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 daughter and authorized representative appeared and testified on the Appellant's behalf. Appellant's other daughter ██████████ and her son ██████████ also testified for the Appellant. ██████████, LTC Program Policy Specialist represented the Department of Community Health. ██████████, the Director of Social Work for ██████████, 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 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 found her to be ineligible to receive Medicaid reimbursed services in a nursing facility. (Exhibit A, Item B and testimony).
3. On ██████████, Appellant's daughter contacted MPRO and requested an immediate review of the NF LOCD. (Exhibit A, Item C).

Docket No. 2014-2362 NHE
Decision & Order

4. On [REDACTED], MPRO utilized the Nursing Facility Level of Care Exception Process and determined that the Appellant did not meet the exception process criteria and upheld the LOCD finding that Appellant was ineligible to receive Medicaid reimbursed services in a nursing facility. (Exhibit A, Item C and testimony).
5. On [REDACTED], Appellant's Request for Hearing was received by the Michigan Administrative Hearing System (MAHS). (Exhibit A, Item F 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.

Docket No. 2014-2362 NHE
Decision & Order

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, 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. ██████████, the Director of Social Work for ██████████ completed the LOCD on ██████████ to determine the Appellant was not eligible for continued 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 from ██████████ determined that Appellant needed supervision for Bed Mobility and Toilet Use. Appellant was independent for Transfers and Eating. ██████████ stated she used the nurse's notes and the CAN's notes to make these determinations. 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 from ██████████ stated she determined that Appellant's cognitive skills were okay. 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 no physician visits and ██████ physician order changes within █████ 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.

██████████
Docket No. 2014-2362 NHE
Decision & Order

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 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 █-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 not been a nursing facility resident for more than █ year. █. █ testified that the Appellant was admitted to █ on as a self-pay on █ and her review was done on █. Accordingly, Appellant did not qualify under Door 7.

Exception Process

The Nurse Review Coordinator with MPRO ██████████ testified and provided documentation that MPRO received the NF Exception Review request from the Appellant's brother and sister on █. (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,
July 1, 2013, p. 12.*

The exception process considers frailty, behaviors and treatments. ██████████ R.N., PACER Project Manager with MPRO testified she received ██████████ call for an MPRO review on ██████████. They proceeded to obtain the Appellant's medical records for the past ██████████ days from ██████████ to do their review. It took until ██████████ to receive all the medical records from ██████████. ██████████ went through each of the exception criteria in detail. The Appellant did not meet any of the exception criteria based on the medical records provided by the nursing facility. (Exhibit A, Items C & D and testimony).

For the frailty categories, 1001, for toilet use, transfers, and bed mobility Appellant was independent or only needed 1 person assist. For 1002, there was no documented consistent shortness of breath, pain, or debilitating weakness. For 1003, there were no documented falls within the past month.

For 1004, there was no mention of medication set up as the facility was dispensing all medications. For 1005, meals were being provided by the facility and there was no mention Appellant had weight change in the medical records received by MPRO, only

██████████
Docket No. 2014-2362 NHE
Decision & Order

one record noted Appellant's weight at █████ pounds. █████ added the Appellant's weight was stable during the review period. For 1006, there was only █████ physician visit, no ER visits and one order change within the past █████ days.

For the Behavior categories, 2001-2004 there were no behavior changes mentioned in the Appellant's medical records. For 3000, █████ with MPRO concluded her testimony concerning the review by pointing out that the Appellant's medical records did not show the 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 █████ stated a letter was sent to the Appellant on █████ to advise her that the facility's decision was upheld. █████ also called █████ to advise her of the same. (Exhibit A, Item C).

Appellant's family testified at the hearing that prior to coming to █████, the Appellant was having problems with her sodium level and her blood sugar. Appellant had to be monitored constantly and had to be weighed constantly and it got to the point where the family couldn't handle the type of care needed so they admitted her to █████ as a self-pay. Appellant was able to get better with the care given at █████ but the family indicated they would have concerns if she were released from the nursing facility at this time, and would probably be back in a nursing facility in a short period of time following her release.

██████████ indicated her mother got up once at █████ to get ready and make sure they were taking care of their father, and she believed that this was unusual behavior. She further indicated that more recently the Appellant weight had dropped from █████ pounds, where it was in the past to less than █████ pounds. █████ stated the Appellant's condition has regressed to the point that she is now on hospice. She also acknowledged that a more recent LOCD was conducted on █████ and this time the Appellant was found to be eligible for Medicaid reimbursed NF level of care.

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, other Medicaid covered services should be 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. The Department's representative also correctly pointed out, that another LOCD was conducted by █████ on █████ and due to a significant change in the Appellant's condition since the █████ review, it was determined that the Appellant was eligible for Medicaid reimbursed NF level of care as of █████.

Docket No. 2014-2362 NHE
Decision & Order

Based on the evidence presented the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on [REDACTED] and on the review conducted by MPRO on [REDACTED]. 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 did not require Medicaid reimbursed NF level of care as demonstrated by the application of the LOCD tool on [REDACTED] and subsequent MPRO review 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] and subsequent MPRO review on [REDACTED]

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.