

**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:

██████████

Appellant

_____ /

Docket No. 2014-33082 NHE

Case No. ██████████

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, appeared and testified on the Appellant's behalf. Appellant was present but did not testify.

██████████, ██████████ with the Department of Community Health; ██████████ r with ██████████ Medical Care Facility ██████████ at ██████████; and ██████████ 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 ██████████ Medicaid beneficiary ██████████ and current resident of ██████████ Medical Care Facility ██████████. (Exhibit A, Item E and testimony).
2. On ██████████ ██████████ conducted an assessment under the Nursing Facility (NF) Level of Care Determination (LOCD) and found Appellant ineligible to receive Medicaid reimbursed services in a nursing facility. (Exhibit A, Item B and testimony).

- [REDACTED]
3. [REDACTED] Appellant and her daughter contacted the Michigan Peer Review Organization (MPRO) and requested a NFLOC immediate review. (Exhibit A, Items C & D and testimony).
 4. [REDACTED] based upon the NFLOC Exception criteria, MPRO determined the Appellant did not meet the review and upheld [REDACTED] denial decision. (Exhibit A, Items C, D & E and testimony).
 5. [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, §5 Beneficiary Eligibility and Admission Process, p. 7 January 1, 2014*].

[REDACTED]

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.*

[REDACTED], the Department's [REDACTED], stated the LOCD is required to be done in order to continue services in a nursing facility when there has been a change in the resident's condition. [REDACTED] along with [REDACTED] established that there is a look back period of 7 days for Doors

[REDACTED]

1, 2, 5, and 6. There is a 14 day look back period for Doors 3 & 4. Ms. Aastad also stated for Door 7 the resident must have been in the facility for over 1 year or she must be in need of nursing facility level of care to remain eligible for Medicaid covered services in a nursing facility.

The Department also presented testimony and documentary evidence that the Appellant did not meet any of the criteria for Doors 1 through 7. [REDACTED] and [REDACTED] [REDACTED] at [REDACTED] completed a LOCD on [REDACTED] 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 [REDACTED] at [REDACTED] determined the Appellant was independent for Bed Mobility, Transfers and Eating. [REDACTED] stated the Appellant sleeps in her wheelchair or the recliner and did not need any assistance to get in her wheelchair or the recliner. [REDACTED] determined Appellant needed supervision for Toilet Use. [REDACTED] used the Appellant's charts, discussions with the nursing staff and her own observations 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."

- [REDACTED]
3. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/ Never Understood."

The Department's witness [REDACTED] at [REDACTED] determined the Appellant had no short term memory problems, she could usually make herself understood, and her cognitive her skills were modified independent. The social worker did two assessments of the Appellant, one on [REDACTED], and another on [REDACTED]. He asked the questions from the MDS and the Appellant scored 15 out of 15 on the [REDACTED] assessment and 12 out of 15 on the April assessment indicating her short term memory was okay, but her cognitive skills were determined to be modified independent. As such, Appellant did not qualify under Door 2. [REDACTED] did state that more recently, within the past few weeks, the Appellant has become more confused, but this was outside the 7 day look back period.

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 [REDACTED] at [REDACTED] determined the Appellant had no physician visits and one physician order change 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

- [REDACTED]
- H. Daily insulin with two order changes in last 14 days
 - I. Peritoneal or hemodialysis

The Department's witness [REDACTED] at [REDACTED] 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. Appellant was on daily insulin at home with no problems, and also during her stay at [REDACTED], but she did not have any order changes on her insulin 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 [REDACTED] at [REDACTED] 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. Her only skilled therapy had been discontinued on [REDACTED] outside of the 7 day look back period. 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 [REDACTED] the social worker at [REDACTED] found the Appellant did not meet the criteria set forth above to qualify under Door 6. A review of her records and his own observations 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

[REDACTED]

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 served by either the MI Choice Program, PACE program, or [REDACTED] a Medicaid reimbursed nursing facility or at least one year. [REDACTED] stated Appellant was admitted to [REDACTED] on [REDACTED], and she did not require ongoing services to maintain current functional status per the LOCD completed on [REDACTED]. Accordingly, Appellant did not qualify under Door 7.

Exception Process

[REDACTED] with MPRO testified and provided documentation that MPRO received the NF Exception Review request from the Appellant and the Appellant's daughter on [REDACTED]. (Exhibit A, Item C 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].

[REDACTED]

The exception process considers frailty, behaviors and treatments. [REDACTED] with MPRO testified she received Appellant's request for an MPRO review on [REDACTED]. They proceeded to obtain the Appellant's medical records for the past 30 days from [REDACTED] to do their review. [REDACTED] 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 & E and testimony).

For the frailty categories, 1001, for toilet use, transfers, and bed mobility Appellant was independent. Appellant could get out of a chair without difficulty. She could ambulate with a two-wheeled walker or propel herself in a wheelchair. Appellant eats in the dining room, and sleeps in a recliner in her room. It was noted she has stress incontinence and wears a brief. For 1002, there was no documented consistent shortness of breath, pain, or debilitating weakness. For 1003, she was found sitting on the floor in her room, but there was no documentation of dizziness or lightheadedness.

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. Appellant had a weight gain of 18 pounds and eats between meals or refuses meals. For 1006, there were no physician visits, no ER visits, and one order change within the past 14 days.

For the Behavior categories, 2001-2004 there was no wandering, no verbal or physical abuse, and no socially inappropriate behaviors were mentioned in the Appellant's medical records. For 3000, [REDACTED] 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 [REDACTED] stated she contacted the Appellant and the facility, and a letter was sent to them to advise that the facility's decision was upheld. (Exhibit A, Items C-E).

Appellant's daughter testified the family has noticed in the afternoon or evening the Appellant gets more confused. Appellant makes odd telephone calls to family members, talking about the past, or requesting to know what day it is, etc. Appellant's daughter said the Appellant sometimes refuses food. Appellant has been compliant with her medications while at [REDACTED], but at home she had been noncompliant. Appellant's daughter said her mother is unsteady on her feet, but did well when she was in therapy. Appellant's daughter said her mother has a lot of bruises from when she has bumped herself. Also her hands are all gnarled and they spasm. She said her mother can't hold silverware or a brush.

Appellant's daughter said the Appellant can only stand for a few minutes, and can only walk a couple of feet without stumbling, and gets out of breath after walking 15 to 20 feet. She also indicated the Appellant gets very confused, and wants to go somewhere, but doesn't know where to go. Appellant's daughter stated within the past two months the Appellant has been very confused. She said the Appellant's doctor told her she has Alzheimer's, and the Appellant was in the hospital with chest pains over the weekend.

[REDACTED]

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.

Based on the evidence presented the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on [REDACTED]. The MPRO Immediate 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].

There was some indication in the evidence presented at the hearing that the Appellant's condition may have worsened since the M [REDACTED] LOCD. It is always possible for the nursing facility to conduct another LOCD if there has been a significant change in an individual's condition. It is always possible that a subsequent LOCD might show that the Appellant now meets the eligibility criteria for Medicaid covered NF services.

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

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

Date Signed: May 5, 2014

Date Mailed: May 5, 2014

WDB [REDACTED]

[REDACTED]

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.