

**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. 2014-34432 PCE

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. The Appellant represented herself. ██████████, Director of Quality Improvement and Program Integrity, appeared on behalf of ██████████ ██████████, LBSW, Intake Coordinator at ██████████ appeared as a witness on behalf of ██████████. ██████████, RN, Pacer Project Manager with ██████████ also testified at the hearing on behalf of ██████████.

ISSUE

Did the Department properly determine that the Appellant was not eligible for PACE services at ██████████

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████-year-old (DOB ██████████) Medicaid beneficiary. (Testimony).
2. The Appellant has the following diagnoses: legally blind, brittle diabetic, bad knees, arthritis, glaucoma, and a prosthesis in one eye. (Exhibits C, 1 and testimony).
3. ██████████ is a contract agency of the Michigan Department of Community Health (Department) responsible for the Program of All-Inclusive Care for the Elderly (PACE) which is geared to the provision of socially and clinically supervised services for an elderly population diagnosed with chronic medical conditions.

4. On ██████████, LBSW, Intake Coordinator at ██████████ did a home assessment with the Appellant in her apartment. ██████████ completed a Michigan Medicaid Nursing Facility Level of Care determination (LOCD) on the Appellant during the assessment. It was determined that: the Appellant was independent in her Activities of Daily Living, the Appellant had no cognitive problems, but had some minor forgetfulness, her cognitive skills were ranked modified independent and she could make herself understood, the Appellant had █ physician visit and one order change within █ days of the evaluation, the Appellant did not have any of the treatments or conditions listed within █ days of the evaluation, she was taking daily insulin but had no order changes with the past █ days, the Appellant did not participate in any skilled rehabilitation therapies during the █ day look back period, the Appellant had not exhibited any challenging behaviors within █ days of the evaluation, and the Appellant was not a current program participant. ██████████ concluded the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care criteria for enrolment in the PACE program. (Exhibits A, C and testimony).
5. On ██████████ called ██████████ and requested a PACE exception review. ██████████, RN, Pacer Project Manager conducted the exception review based on the information provided by ██████████ and concurred with ██████████, upholding the denial of enrollment on ██████████ (Exhibit A, p. 2, Exhibit C, p. 3 and testimony).
6. On ██████████ sent Appellant an Adequate Action Notice advising her that she did not qualify for nursing level services based on the LOCD. The notice advised Appellant of her rights to a Medicaid Fair Hearing. (Exhibit A, p. 2 and testimony).
7. On ██████████, Appellant was given an Adequate Action Notice of her denial of enrollment in the PACE program by ██████████ (Testimony).
8. On ██████████, the Michigan Administrative Hearing System received Appellant's request for a hearing. (Exhibit 1).

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.

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The Michigan Department of Community Health (MDCH) implemented functional/medical eligibility criteria for Medicaid nursing facilities, MI Choice, and the Program of All-Inclusive Care for the Elderly (PACE) program. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

The *Medicaid Provider Manual, Nursing Facility Coverages*, §§5.1.D. & 5.1.E, reference the use of the online Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) tool for the PACE program. The LOCD must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE, where available Medicaid Provider Manual, Nursing Facility Coverages, §§5.1.D. & 5.1.E, January 1, 2013, pp. 9-14.

The LOCD tool consists of seven-service entry Doors. The Doors are: Activities of Daily Living, Cognition, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependency. In order to be found eligible for services, the Appellant must meet the requirements of at least one Door.

The *Medicaid Provider Manual, Program of All-Inclusive Care for the Elderly* chapter provides in part:

3.1 Eligibility Requirements

To be eligible for PACE enrollment or continued enrollment, applicants or participants must meet the following requirements:

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Human Services)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.
- Receive a comprehensive assessment of participant needs by an interdisciplinary team.
- Be appropriate for placement in PACE based on completion of the Michigan Medicaid Nursing Facility Level of Care Determination.
- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.

- Not concurrently enrolled in the MI Choice program.
- Not concurrently enrolled in an HMO. [p. 3].

3.2 COMPLETION OF THE MEDICAID NURSING FACILITY LOC DETERMINATION

A PACE applicant's eligibility for coverage of nursing facility services and enrollment in the PACE organization is determined by the online application of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). The PACE organization will not be reimbursed for nursing facility services rendered when the applicant is determined not to meet the LOCD criteria. Providers must submit the LOCD information into its online version no later than fourteen (14) calendar days following the start of services. Instructions and required forms related to the completion of the Medicaid Nursing Facility Level of Care Determination are available on the MDCH website. (Refer to the Directory Appendix for website information.)

The LOCD must be completed by a health professional (physician, registered nurse, licensed practical nurse, clinical social worker (BSW or MSW), or physician assistant) representing the proposed provider. Nonclinical staff may perform the evaluation when clinical oversight by a professional is performed. The PACE organization will be held responsible for enrolling only those participants who meet the criteria outlined in this section.

The Michigan Medicaid Nursing Facility Level of Care Determination must be completed using the online version in the following situations:

- all new enrollments of Medicaid-eligible beneficiaries.
- re-enrollment of Medicaid-eligible beneficiaries.
- significant change in condition of a current PACE Medicaid-eligible beneficiary.

The online LOCD must be completed only once for each admission or readmission to the program. [p. 3-4].

* * *

3.4 NURSING FACILITY LEVEL OF CARE EXCEPTION PROCESS - EXCEPTION REVIEW

A Nursing Facility (NF) Level of Care (LOC) Exception Process is a review that is available for financially eligible beneficiaries who have demonstrated a significant level of long term care need but do not meet the LOCD. The NF LOC Exception Process is initiated when the PACE organization telephones the MDCH designee and requests the NF LOC Exception Review on the date that the applicant was determined ineligible based on the online version of the LOCD. The NF LOC Exception criteria and information on how to request an Exception Review is available on the MDCH website. (Refer to the Directory Appendix for website information.)

3.5 TELEPHONE INTAKE GUIDELINES

The Telephone Intake Guidelines are questions that identify potential PACE participants for further assessment. The Telephone Intake Guidelines do not determine program eligibility. Use of the Telephone Intake Guidelines is at the discretion of the PACE organization. The guidelines are available on the MDCH website. (Refer to the Directory Appendix for website information.) [p. 4].

* * *

3.8 ADVERSE ACTION NOTICE

When the provider determines that the beneficiary does not qualify for services based on the Michigan Medicaid Nursing Facility Level of Care Determination, the organization must immediately issue an adverse action notice to the beneficiary or his authorized representative. The action notice must include all of the language of the sample letters for long term care. Copies of the letters are available on the MDCH website. (Refer to the Directory Appendix for website information.)

As with any benefit denial, the beneficiary may request an administrative hearing. The Michigan Administrative Hearing System (MAHS) Policies and Procedures Manual explains the process by which each different case is brought to completion. The manual is available for review on the MDCH website. (Refer to the Directory Appendix for MAHS contact and website information.) [p. 5].

██████████ presented testimony and documentary evidence that the Appellant did not meet criteria at any Door and that the Appellant was ineligible for PACE services.

The evidence in this case shows that on ██████████ LBSW, Intake Coordinator at ██████████ did a home assessment with the Appellant in her apartment. ██████████ completed a LOCD on the Appellant during the assessment. It was determined that the Appellant was not eligible to participate in the program because she did not meet the criteria for any LOCD door. Specifically, the following was concluded for each door:

Door 1
Activities of Daily Living (ADLs)

The LOC, page 3 of 9 provides that the Appellant must score at least six points to qualify under Door 1.

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 ██████████ determined the Appellant was independent in her Activities of Daily Living. I find based on the information available at the time of the in home assessment that ██████████ properly determined the Appellant was independent in her Activities of Daily Living and did not meet LOCD Door 1 criteria.

Door 2
Cognitive Performance

The LOC, pages 3-4, provides that to qualify under Door 2 an Appellant must:

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."

██████████ stated the Appellant had no cognitive problems, but had some minor forgetfulness. ██████████ ranked Appellant's cognitive skills as modified independent due to the minor forgetfulness. ██████████ stated the Appellant could make herself understood. This ALJ finds the testimony and documentation from the ██████████ is sufficiently reliable to sustain the determination that Appellant had a memory problem, her cognitive skills were modified independent, and she could make herself understood. I find the Appellant does not qualify for entry through this Door.

Door 3
Physician Involvement

The LOC indicates that to qualify under Door 3, the Appellant must:

... [M]eet either of the following to qualify under

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.

The evidence of record establishes the Appellant had ██████ physician appointment and ██████ new order during the ██████ day look back period. I find the Appellant does not qualify for entry through this Door.

Door 4
Treatments and Conditions

The LOC, page 5, indicates that in order to qualify under Door 4, the Appellant must receive, within 14 days of the assessment date, any one of the following health treatments or demonstrated any one 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

It is undisputed the Appellant did not have any of the pertinent medical conditions to be eligible via this entry door. ██████████ did find that the Appellant was taking daily insulin, but only had one order change in the last ██████ days.

Door 5
Skilled Rehabilitation Therapies

The LOC, page 6, provides that the Applicant must:

... [H]ave 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

It is undisputed that the Appellant had no skilled therapy within the look back period. This ALJ finds the reliable evidence of record supports the determination that the Appellant did not qualify for entry through this Door.

Door 6
Behavior

The LOC, page 6, provides a listing of behaviors recognized under Door 6: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, and Resists Care.

The LOC, page 8, provides that the Appellant would qualify under Door 6 if the Appellant had a score under one the following two options:

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.

██████████ presented evidence that the Appellant did not exhibit any of the behaviors of concern. ██████████ stated she had made a mistake on the LOCD contained in Exhibit A, by marking yes for delusions and hallucinations, but this was corrected on the LOCD contained in Exhibit B, and she clearly testified that the Appellant did not have delusions or hallucinations. This ALJ finds ██████████ made the correct determination based upon the criteria contained in the LOC and its field guide. The Appellant is not qualified to enter through this Door.

Door 7
Service Dependency

The Appellant could qualify under Door 7 if there was evidence that [he/she] is currently being served in a nursing facility (and for at least one year) or by the MI Choice or PACE program, and required ongoing services to maintain her current functional status.

██████████ provided evidence that the Appellant was not currently being served by the PACE program, the MI Choice program, or in a nursing facility. ██████████ concluded that the Appellant did not meet the Michigan Medicaid Nursing Facility Level of Care criteria for enrolment in the PACE program based on the LOCD. ██████████ stated, however, that she thought the Appellant might be eligible for an exception due to her falls so she contacted MPRO for an exception review. ██████████ after the exception was denied she gave Appellant an Adequate Action Notice stated on ██████████ denying her enrollment in the PACE program and assisted her in completing paperwork for an appeal.

Exception Process

██████████, R.N., PACER Project Manager with MPRO testified and provided documentation that MPRO received the NF Exception Review request from the ██████████. ██████████ on ██████████. (Exhibit C, p. 3 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

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considered as eligible under the Exception Review.
[*Medicaid Provider Manual, Nursing Facility Coverages*,
January 1, 2014, p. 12].

The exception process considers frailty, behaviors and treatments. [REDACTED], R.N., PACER Project Manager with [REDACTED] testified she received [REDACTED] call for an exception review on [REDACTED] [REDACTED] stated since this was Appellant's first LOCD she was limited in her review to the information provided by [REDACTED] [REDACTED] went through each of the exception criteria in detail. The Appellant did not meet any of the exception criteria based on the information provided by [REDACTED]. (Exhibit A, p. 2, Exhibit C, p. 3 and testimony).

For the frailty categories, 1001, for toilet use, transfers, and bed mobility Appellant was independent. Appellant could ambulate inside with a cane or a walker and outside with a guide dog or another person. [REDACTED] noted it only took the Appellant less than a minute to get out of her chair and about [REDACTED] minute for transfers. Appellant could not be approved for an exception under 1001. For 1002, there was no documented consistent shortness of breath, pain, or debilitating weakness. [REDACTED] stated the information provided indicated the Appellant tired easily, had some shortness of breath, but it took only [REDACTED] minute to recover. Accordingly, Appellant could not be approved for an exception under 1002. For 1003, [REDACTED] noted the Appellant had only [REDACTED] fall with the past [REDACTED] days and there needs to be at least [REDACTED] falls with the [REDACTED]-day period to qualify for an exception under 1003 criteria.

For 1004, [REDACTED] stated there was a medication set up for the Appellant, and the information provided indicated the Appellant was not having any difficulty with it so the medication set up was found to be successful. For 1005, meals were not noted to be a problem as the Appellant had no weight loss within the past month. For 1006, there was only one physician visit, no ER visits, and one order change within the past [REDACTED] days. [REDACTED] stated Appellant could not be approved for an exception under any of these categories.

For the Behavior categories, 2001-2004 there was no wandering, no verbal or physical abuse, and no socially inappropriate behaviors noted in information on the Appellant provided by [REDACTED]. For 3000, [REDACTED] stated the Appellant did not have a need for any complex treatments or nursing care. [REDACTED] stated that since the Appellant did not meet the criteria for an exception, [REDACTED] upheld the denial decision and a letter was sent to the Appellant to advise that [REDACTED] decision was upheld. (Exhibit A, p. 2, Exhibit C, p. 3 and testimony).

I find based on the evidence presented, that [REDACTED] properly found that the Appellant did not qualify for the PACE program through any of the Doors on the LOCD. The evidence shows the Appellant does not meet the Michigan Medicaid Nursing Facility Level of Care. Therefore, Appellant is not eligible for PACE program at this time. At the hearing, the Appellant did not dispute the findings of the Department's

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witnesses; in fact, she acknowledged that she did not quite meet the guidelines under the LOCD.

I find, based on the information available at the time of the assessment, that the Department correctly determined the Appellant was not eligible for the PACE program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's enrollment in the PACE program.

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 mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.