

**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. 2014-35165 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 appeared and testified on his own behalf. ██████████, Long Term Care Program Policy Specialist, represented the Department of Community Health ("DCH" or "Department"). ██████████, a registered nurse and project manager at the ██████████ ██████████, an MDS Nurse at ██████████ ██████████, Director of Social Services at ██████████ ██████████, a social worker at ██████████; and ██████████, a social worker at ██████████; testified as witnesses for the Department.

ISSUE

Did the Department properly determine that the Appellant does 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 who has been diagnosed with, among other conditions, atrial fibrillation; coronary artery disease; cardiomyopathy; diarrhea; congestive heart failure; pancreatitis; pleural effusion; depression; and bipolar disorder. (Respondent's Exhibit B, page 1; Respondent's Exhibit D, page 1).
2. Appellant was admitted as a resident at ██████████ on or about ██████████. (Testimony of ██████████).

3. Medicaid policy requires that nursing facility residents meet the outlined medical/functional criteria found in the Michigan Medicaid Nursing Facility Level of Care Determination (“LOCD”) evaluation tool on an ongoing basis in order for Medicaid to reimburse for care. (Medicaid Provider Manual (MPM), January 1, 2014 version, Nursing Facility Chapter, pages 7-16).
4. On ██████████ Appellant was assessed under the LOCD evaluation tool and found to be eligible for nursing facility placement through Door 1 of that tool. (Respondent’s Exhibit B, page 1).
5. On ██████████ Appellant was again assessed under the LOCD evaluation tool, but this time he was found to be ineligible for nursing facility placement based upon his failure to qualify via entry through one of the seven doors of that tool. (Respondent’s Exhibit C, page 1).
6. Appellant then contacted ██████████ and requested an Exception Process review. (Testimony of ██████████).
7. ██████████ requested Appellant’s medical records from the facility and, after receiving the records for the past ████████ months, reviewed Appellant’s case on ██████████. (Respondent’s Exhibit D, page 1; Testimony of ██████████).
8. That same day, ██████████ issued a written notice to the Appellant stating that he no longer qualified for nursing facility level services and his services would be terminated in ████████ days from the date of the notice. (Respondent’s Exhibit F, page 1).
9. On ██████████, the Michigan Administrative Hearing System received the Request for Hearing filed in this matter. (Respondent’s Exhibit G, page 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.

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, January 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, January 1, 2014 version, Nursing Facility Chapter, pages 9-11).

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, January 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, January 1, 2014 version, Nursing Facility Chapter, page 11).

The February 1, 2014 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 and was therefore ineligible for a 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 assistance with showering at the time of the LOCD, he was not receiving any assistance related to the tasks identified in Door 1 and he specifically testified that he is independent in those areas. Similarly, while Appellant has medical problems, none of his conditions or behaviors met the criteria for passing through Doors 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.

Finally, while Appellant appears to argue that he passes through Door 2 due to his memory problems, he fails to meet the other requirements for that door. As described above, in order to qualify under Door 2, an applicant must be (1) “Severely Impaired” in Decision Making; (2) “Yes” for Memory Problem, and Decision Making is “Moderately Impaired” or “Severely Impaired.”; or (3) “Yes” for Memory Problem, and Making Self Understood is “Sometimes Understood” or “Rarely/Never Understood.” Accordingly, even if Appellant’s testimony regarding memory problems is true, he still would have to show that either his decision making is at least moderately impaired or that he is only sometimes understood or rarely/never understood. Here, as found by the facility during

the LOCD, Appellant does not have any difficulties making himself understood. Appellant did not identify any ongoing cognitive difficulties with communication and Appellant testified clearly during the hearing itself. Similarly, while Appellant testified that he sometimes confused due to his memory problems, he did not identify any difficulties with daily decision making and he specifically identified examples of his decision making, including deciding what to eat; deciding when and for how long he is able to shower; and deciding when he needs assistance from staff.

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

In addition to challenging the LOCD, Appellant also indicated disagreement with the Exception Process criteria. 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, January 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 subsequently contacted ██████████ requesting an immediate review, which was completed ██████████.

During the hearing, the ██████ Nurse Reviewer went through each of the exception criteria and the summary notes of the ██████ review. ██████ determined that the Appellant did not meet any of the exception criteria based on the information provided by the nursing facility.

In response, Appellant testified regarding his general health rather than the specific areas of the exception. Appellant also argued that he cannot live outside of the facility without further treatment or skilled therapy. However, the existence of Appellant's medical conditions is not in dispute and the above policy is clear that Appellant must meet the specific criteria identified in policy. ██████ properly applied that policy in this case and Appellant failed to demonstrate that he met any of the standards required for an exception.

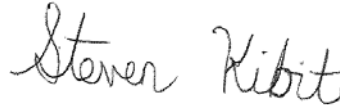
Based on the information available at the time of the exception review, the Department properly found that Appellant also did not meet the criteria for exception eligibility for nursing facility services as described in the Medicaid Provider Manual.

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 Appellant does not require a Medicaid reimbursable Nursing Facility Level of Care.

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

SK/db

cc: ██████████

***** 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.