

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 and transient ischemic attacks. (Testimony of Appellant's representative).
2. Appellant was admitted as a resident at █████ in █████ (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. (Medicaid Provider Manual (MPM), April 1, 2014 version, Nursing Facility Chapter, pages 9-11).
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 she was found to be ineligible for nursing facility placement given her failure to meet the requirements of at least one of the seven doors of that tool. (Respondent's Exhibit C, page 1).
6. That same day, Altercare issued a written notice to Appellant stating she no longer qualified for nursing facility level services and her services would be terminated in █████ days from the date of the notice. (Respondent's Exhibit H, page 1).
7. Appellant also signed a form indicating that she had received a copy of the notice of termination and her right to appeal. (Respondent's Exhibit G, pages 1-2).
8. On █████, the Michigan Administrative Hearing System received a Request for Hearing filed by Appellant and her representative. (Respondent's Exhibit D, 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, April 1, 2014 version, Nursing Facility Chapter, pages 9-14).

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 9-14).

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.

Appellant bears the burden of proving by a preponderance of the evidence that the facility and Department erred in determining that she did not meet the requirements of at least one door.

Here, for the reasons discussed below, the undersigned Administrative Law Judge finds that Appellant and her representative have failed to meet that burden of proof and the decision regarding each door must therefore be affirmed.

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

Here, the facility determined that Appellant did not pass through Door 1 because the medical record documenting the assistance provided to Appellant by its nursing staff did not identify any assistance with bed mobility, transfers, toilet use or eating in the relevant 7-day look-back period.

In response, Appellant's representative testified that, while Appellant is independent in eating, she sometimes needs assistance with bed mobility, transferring in-and-out of her wheelchair, and toileting. Appellant's representative also argued in her brief that Appellant has difficulty swallowing and sometimes needs assistance with eating, and that Appellant has issues with toileting and transferring.

However, given the record in this case, Appellant and her representative have failed to meet their burden of proving by a preponderance of the evidence that the facility erred in determining that Appellant did not pass through Door 1 at the time of the LOCD. The Department's witnesses credibly testified regarding the assistance being provided by the nursing staff during the relevant time period while Appellant's representative's claims are inconsistent. For example, while Appellant's representative testified that Appellant is independent in eating, she later wrote that Appellant sometimes needs assistance with task. Moreover, Appellant's representative only identifies occasional assistance and there is no suggestion or evidence demonstrating that Appellant required any assistance with bed mobility, transfers, toilet use or eating in the relevant 7-day look-back period.

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."

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."

Here, the facility found and Appellant's representative concedes that Appellant does not have any problems with her memory. Similarly, the facility also determined and Appellant's representative also concedes that Appellant does not have any difficulties making herself understood.

Accordingly, based on the above criteria, Appellant would only qualify under Door 2 if she is severely impaired in daily decision making. Appellant's representative believes that she is while the facility/Department determined that Appellant is modified independent in that area.

With respect to Door 2 in general and the issue of daily decision making in particular, the Field Guidelines utilized by the Department provide in part:

The Michigan nursing facility level of care definition is meant to include applicants who need assistance based on cognitive performance. Door 2 uses the Cognitive Performance Scale to identify applicants with cognitive difficulties, especially difficulties with short-term memory and daily decision-making, both essential skills for residing safely in the community.

The applicant's ability to remember, think coherently, and organize daily self-care activities is very important. The focus is on performance, including a demonstrated ability to remember recent events and perform key decision-making skills.

Questions about cognitive function and memory can be sensitive issues for some applicants who may become defensive, agitated, or very emotional. These are common reactions to performance anxiety and feelings of being exposed, embarrassed, or frustrated when the applicant knows he/she cannot answer the questions cogently.

Be sure to interview the applicant in a private, quiet area without distraction (not in the presence of others, unless the applicant is too agitated to be left alone). Using a nonjudgmental approach to questioning will help create a needed sense of trust. Be cognizant of possible cultural differences that may affect your perception of the applicant's response. After eliciting the applicant's responses to questions, return to the family or specific caregivers as appropriate to clarify or validate information regarding cognitive function over the last 7 days. For applicants with limited communication skills or who are best understood by family or specific caregivers, you would need to carefully consider family insights in this area.

- Engage the applicant in general conversation to help establish rapport.
- Actively listen and observe for clues to help you structure your assessment. Remember: repetitiveness, inattention, rambling speech, defensiveness, or agitation may be challenging to deal with during an interview, but these behaviors also provide important information about cognitive function.
- Be open, supportive, and reassuring during your conversation with the applicant.

An accurate assessment of cognitive function can be difficult when the applicant is unable to verbally communicate. It is particularly difficult when the areas of cognitive function you want to assess require some kind of verbal response from the applicant (memory recall). It is certainly easier to perform an evaluation when you can converse with the applicant and hear responses that give you clues as to how the applicant is able to think, if he/she understands his/her strengths and weaknesses, whether he/she is repetitive, or if he/she has difficulty finding the right words to tell you what they want to say.

* * *

Cognitive Skills for Daily Decision Making

The intent of this section is to record the applicant's actual performance in making everyday decisions about the tasks or activities of daily living. This item is especially important for further assessment in that it can alert the assessor to a mismatch between the applicant's abilities and his/her current level of performance, or that the family may inadvertently be fostering the applicant's dependence.

Process

It is suggested that you consult with the applicant first, then, if possible, a family member. Observations of the applicant can also be helpful. Review events of the last 7 days. The 7-day look-back period is based on the date of the eligibility determination. The inquiry should focus on whether the applicant is actively making his/her decisions, and not whether there is a belief that the applicant might be capable of doing so. Remember, the intent of this item is to record what the applicant is doing. When a family member takes decision-making responsibility away from the applicant regarding tasks of everyday living, or the applicant does not participate in decision making, whatever his/her level of capability, the applicant should be considered to have impaired performance in decision making.

Examples of Decision Making

- Choosing appropriate items of clothing
- Knowing when to go to meals
- Knowing and using space in home appropriately
- Using environmental cues to organize and plan the day (clocks and calendars)
- Seeking information appropriately (not repetitively) from family or significant others in order to plan the day
- Using awareness of one's own strengths and limitations in regulating the day's events (asks for help when necessary)

- Knowing when to go out of the house
- Acknowledging the need to use a walker, and using it faithfully

Field 34: Independent

Select this field when the applicant's decisions were consistent and reasonable (reflecting lifestyle, culture, values); the applicant organized daily routine and made decisions in a consistent, reasonable, and organized fashion.

Field 35: Modified Independent

The applicant organized daily routines and made safe decisions in familiar situations, but experienced some difficulty in decision-making when faced with new tasks or situations.

Field 36: Moderately Impaired

The applicant's decisions were poor; the applicant required reminders, cues, and supervision in planning, organizing, and correcting daily routines.

Field 37: Severely Impaired

The applicant's decision-making was severely impaired; the applicant never (or rarely) made decisions.

Respondent's Exhibit E, pages 6-9

Here, the facility determined that Appellant was modified independent in her cognitive skills for daily decision making on the basis that Appellant had no cognitive issues, had no memory problems, was able to choose her own clothing daily, knew the location of her room, recognized staff members, and recognized her own family.

In response, Appellant's representative testified that Appellant has no cognitive issues, but cannot make logical decisions on a daily basis and does not understand new situations. Appellant's representative also argued in her brief that Appellant cannot make any decisions for herself, such as decisions regarding food and medications, and

has not made any such decisions in years. She also asserted that Appellant's inability to acknowledge her need to use a walker or to use that walker faithfully directly lead to a number of falls and Appellant's placement in a nursing facility.

However, there is no evidence of any specific diagnosis affecting Appellant's decision making at the time of the LOCD. The record also confirms that Appellant is stable in nursing facility; dresses herself and chooses appropriate items of clothing to wear; and knows when to seek assistance from staff.

Appellant therefore may be limited in the decision making she does and she may experience some difficulty in decision making when faced with new tasks or situations, but it also appears that she is stable in her daily routines and is able to organize those routines and make safe decisions in familiar situations. Moreover, even if Appellant required reminders, cues, and supervision in planning, organizing, and correcting her daily routines, she still would not rise to the level of severely impaired and the facility/Department properly found that Appellant did not pass through Door 2 of the LOCD at the time that determination was performed.

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.

Here, the facility found that Appellant did not pass through Door 3 on the basis that there were no physician visits or physician order changes documented in Appellant's medical record for the 14 days preceding the LOCD.

In response, Appellant's representative testified and argued that Appellant's doctors have opined that Appellant's needs extensive care and should remain in a nursing care facility.

However, even assuming that Appellant's representative's testimony is correct, the criteria of Door 3 only looks at physician involvement and it identifies specific requirements that must be met. Based on the undisputed evidence in this case, Appellant did not meet those requirements and therefore did not pass through Door 3.

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.

Here, the facility found that Appellant did not pass through Door 4 on the basis that none of the treatments or conditions identified in the LOCD were documented in Appellant’s medical record.

In response, Appellant’s representative testified that Appellant does have pressure sores and has had pneumonia in the past.

However, there is no evidence in the record suggesting that Appellant had pneumonia in the 14 days preceding the LOCD or that Appellant has any Stage 3-4 pressure sores. Accordingly, the facility’s finding regarding Door 4 must be affirmed.

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.

Here, the facility found that Appellant did not pass through Door 5 on the basis that she was not receiving and was not scheduled to receive any skilled rehabilitation therapies during the time relevant to the LOCD.

In response, Appellant’s representative testified and argued that Appellant did receive physical therapy in the past and that the therapy was improperly discontinued. Appellant’s representative also asserted that, in lieu of physical therapy, Appellant exercises by walking and she stills needs physical therapy.

However, Appellant’s representative’s testimony is unsupported by any other evidence and even she acknowledges that no skilled rehabilitation therapies were scheduled or delivered in the 7 days prior to the LOCD. Walking, even when supervised, does not constituted skilled therapy and Appellant failed to meet the requirements of Door 5 at the time the LOCD was performed.

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.

Here, the facility found that Appellant did not pass through Door 6 on the basis that Appellant’s medical record did not document Appellant exhibiting any of the behaviors identified in the LOCD during the 7 days prior to the evaluation.

In response, Appellant’s representative testified that Appellant occasionally resists having her doctor examine her. She also argued in her brief that Appellant suffers from delusions regarding Appellant’s abilities and health.

Given the above evidence, the facility’s determination regarding Door 6 must be affirmed. Appellant’s representative’s claims are completely unsupported by any other evidence and she failed to describe the same behaviors in her testimony and in her brief. Moreover, even assuming Appellant’s representative’s inconsistent testimony and arguments are true, Appellant’s occasional hesitation in being examined and her beliefs regarding her own health do not rise to the levels contemplated by Door 6, as described in the below field guidelines:

Resists Care

This section identifies applicants who resisted taking medications or injections, ADL assistance or eating. This applicant may have pushed a caregiver during ADL assistance. This category does not include instances where the applicant has made an informed choice not to follow a course of care (the applicant has exercised his/her right to refuse treatment and reacts negatively as others try to re-institute treatment).

Signs of resistance may be verbal or physical (i.e., physically refusing care, pushing caregiver away, scratching caregiver).

Take an objective view of the applicant's behavioral symptoms. The coding for this item focuses on the applicant's actions, not intent. The fact that family members may have become used to the behavior and minimize the applicant's presumed intent is not pertinent to this coding. Does the applicant manifest the behavioral symptom or not? This is the test you should use in coding these items.

Observe the applicant or significant others during assessment. Observe how the applicant responds to attempts by family members or significant others to assist his/her care. Consult with family members who provide direct care. Ask if they know what occurred throughout the day and night for the last 7 days.

Field 84: 0 - Behavior not exhibited in last 7 days

Field 85: 1 - Behavior of this type occurred 1-3 days in last 7 days

Field 86: 2 - Behavior of this type occurred 4-6 days, but less than daily

Field 87: 3 - Behavior of this type occurred daily

Problem Conditions

Applicants who need long term care may experience delusions and hallucinations that impact the applicant's ability to live independently in the community. Applicants who qualify at this door must also meet the PASARR requirements for nursing facility admission if they choose a residential setting for care.

Field 88/89: Delusions (Yes/No)

Select "yes" when the applicant has exhibited delusional thinking within the last 7 days.

Field 90/91: Hallucinations (Yes/No)

Select "yes" when the applicant has clearly demonstrated having experienced hallucinations within the last 7 days.

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.

Here, the facility determined that Appellant did not pass through Door 7 on the basis that Appellant had not been a participant for at least one year.

In response, Appellant's representative notes that Appellant would have been a participant for over a ██████ if the LOCD had been performed a ██████ later that Appellant has now been a resident in the facility for over a year. She also asserts that Appellant is dependent on the services of the program.

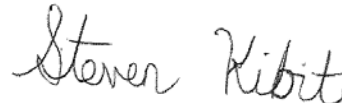
However, even assuming that Appellant can demonstrate service dependency, she had not been a participant for at least ██████ year at the time the LOCD was performed. This Administrative Law Judge's jurisdiction is limited to reviewing the facility and Department's decision in light of the information available at the time and, in this case, the undisputed evidence demonstrates that Appellant did not meet the requirements of Door 7 at the time of the LOCD. Therefore, the determination regarding Door 7 must also be affirmed.

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: ██████████

[REDACTED]
Docket No. 2014-35736 NHE
Decision and Order

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.