

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant
_____ /

Docket No. 14-013998 NHE
██████████ ██████████

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, an in-person hearing was held on ██████████ ██████████ ██████████. ██████████, Appellant's brother, appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. ██████████, Appeals Review Officer, represented the Michigan Department of Community Health ("MDCH" or "Department"). ██████████, a Long Term Care Program Policy Specialist with the Department; ██████████, a registered nurse and project manager at the Michigan Peer Review Organization ("MPRO"); ██████████, a Unit Manager at the ██████████ of ██████████ ██████████ nursing care facility; ██████████, ██████████ Director of Nursing; ██████████ a social worker at ██████████; ██████████ Nurse Manager; and ██████████, a MDS nurse at ██████████; also testified as witnesses for the Department.

ISSUE

Did the Department properly determine that 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 ██████████ year-old Medicaid beneficiary who has been diagnosed with, among other conditions, a cerebrovascular accident; hypertension; gastro esophageal reflux disease; osteoarthritis; and dementia. (Exhibit A, pages 11, 20).

2. In ██████████, Appellant was admitted as a resident at ██████████ and, on ██████████, Autumnwood conducted a Michigan Medicaid

Nursing Facility Level of Care Determination (“LOCD”). (Exhibit A, page 11).

3. During the LOCD, ██████████ found that Appellant was eligible to receive Medicaid reimbursable services at the facility by passing through Door 1 of the LOCD evaluation tool. (Exhibit A, page 11).
4. On ██████████, Appellant was again assessed under the LOCD evaluation tool, but this time he was found to be ineligible for Medicaid nursing facility care based upon his failure to qualify via entry through one of the seven doors of that tool. (Exhibit A, page 12).
5. The evaluation was performed by Nurse ██████ and, with respect to Door 7, she found that Appellant did not pass through the door because he had not been a participant in the MI Choice program or the PACE program for at least one year. (Exhibit A, page 12; Testimony of ██████)
6. The facility then contacted MPRO and requested a nursing facility level of care exception. (Testimony of ██████).
7. MPRO reviewed Appellant’s case on ██████████ and determined that Appellant did not meet the criteria for an exception. (Exhibit A, pages 13-14; Testimony of ██████).
8. That same day, MPRO also issued a written notice to the Appellant stating that he no longer qualified for Medicaid nursing facility level services and his services would be terminated in █ days from the date of the notice. (Exhibit A, page 12).
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter. (Exhibit A, pages 17-22).
10. With due notice, a telephone hearing was scheduled for ██████████.
11. Appellant’s representative subsequently requested that the matter be held in-person and the hearing was rescheduled as an in-person hearing on ██████████.

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 Coverages Chapter, describes the policy and process for admission and continued eligibility, as well as the functional/medical criteria requirements, for Medicaid-reimbursed nursing facility, MI Choice, and PACE services. See MPM, July 1, 2014 version, Nursing Facility Coverages Chapter, pages 7-15.

Section 5.1.D.1 of the Coverages Section of the Nursing Facility Coverages 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. See MPM, July 1, 2014 version, Nursing Facility Coverages 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. See MPM, July 1, 2014 version, Nursing Facility Coverages 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. See MPM, July 1, 2014 version, Nursing Facility Coverages Chapter, page 11.

The [REDACTED] 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 seven Doors on ██████████ and was therefore ineligible for Medicaid reimbursable nursing facility level of care.

Appellant and his representative bear the ultimate burden of proving by a preponderance of the evidence that the Department erred in finding that he did not require a Medicaid reimbursable Nursing Facility Level of Care while the Department also bears the initial burden of going forward with sufficient evidence to show that its action is correct and in accordance with law and policy.

Here, with respect to at least one door, it is clear that the LOCD was conducted incorrectly and that Department’s determination therefore failed to comply with the applicable law and policy.

As discussed above, the facility determined that Appellant did not pass through Door 7 of the LOCD evaluation tool because he had not been a participant in the MI Choice program or the PACE program for at least one year.

However, as clearly provided in policy and acknowledged by ██████████ the Department's witness who addressed the applicable policy, an applicant can also meet the requirement of being a program participant for at least one year by being served by a Medicaid reimbursed nursing facility for at least one year. For example, the field guidelines discussing Door 7 provide in part:

The applicant has been served by MI Choice, PACE or by a Medicaid reimbursed nursing facility for at least one year AND requires ongoing services to maintain current functional status. You may combine time the applicant received services across the three programs. No other community, residential or informal services are available to meet the applicant's needs.

Exhibit A, page 38 (Emphasis added)

In this case, it is undisputed that Appellant has been served by a Medicaid reimbursed nursing facility since ██████████ and, consequently, he clearly meets the requirement of being a program participant for at least one year. The facility therefore erred in its findings with respect to Door 7.

As Appellant has been served by a Medicaid reimbursed nursing facility for at least one year, the facility should have then determined whether he met the second element of Door 7, *i.e.* that he required ongoing services to maintain functional status.

However, because of its mistake, the facility never addressed that second element at the time of the LOCD.

The Department's representative and ██████████ argued during the hearing that the error was harmless because, in their view, Appellant's needs could be met by other community, residential or informal services that are available outside of the facility.

However, no such evaluation was conducted at the time and the witnesses from the facility expressly testified that, if such a determination had been made at the time, the facility would have found that Appellant did require ongoing services at the facility in order to maintain current functional status and Appellant would have therefore been found to pass through Door 7.

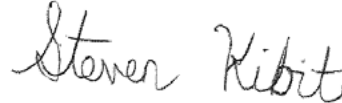
Accordingly, the undersigned Administrative Law Judge finds that, because the LOCD was incorrectly conducted, the Department's subsequent action was not in accordance with the applicable policy and the action must therefore be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly determined that Appellant did not require a Medicaid reimbursable Nursing Facility Level of Care.

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.