

**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. 14-017774 NHE

██████████ ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and upon a request for hearing filed on Appellant's behalf.

After due notice, a telephone hearing was held on ██████████, Local Long Term Care Ombudsman, appeared and testified on Appellant's behalf. ██████████, Appellant's legal guardian, also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Michigan Department of Community Health ("MDCH" or "Department"). ██████████, a Long Term Care Program Policy Specialist with the Department, testified as a witness for the Department. ██████████, registered nurse; ██████████, Business Office Manager; and ██████████, social worker; from ██████████") 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 an ██████ year-old female who has been diagnosed with carpal tunnel syndrome, neuropathy, spinal stenosis, cervicalgia, dementia, and schizo-affective disorder or schizophrenia. (Exhibit A, pages 11, 14; Testimony of Appellant's guardian; Testimony of Welker).
2. Appellant also has a full legal guardian. (Exhibit A, page 16).
3. On or about ██████████ Appellant was admitted as a resident at ██████████. (Testimony of Appellant's guardian; Testimony of ██████████).

4. At that time, her stay was covered by her Medicare. (Testimony of ██████████).
5. On ██████████ conducted a Michigan Medicaid Nursing Facility Level of Care Determination (“LOCD”). (Exhibit A, page 11).
6. During the LOCD, Fenton Extended Care found that Appellant was eligible to receive Medicaid reimbursable services at the facility by passing through Door 5 of the LOCD evaluation tool. (Exhibit A, page 11).
7. Appellant passed through Door 5 because of the occupational therapy she was receiving at the time. (Exhibit A, page 11).
8. On ██████████, Appellant was again assessed under the LOCD evaluation tool, but this time she was found to be ineligible for Medicaid nursing facility care based upon her failure to qualify via entry through one of the seven doors of that tool. (Exhibit A, page 12).
9. The evaluation was performed by Welker and, with respect to Door 6 specifically, she found that Appellant did not pass through the door because she had not displayed any of the listed behaviors within the relevant look-back period. (Testimony of ██████████).
10. Subsequently, ██████████ sent Appellant’s guardian written notice of its determination that Appellant no longer qualified for a Medicaid reimbursable nursing facility level of care. (Testimony of Appellant’s guardian; Testimony of ██████████).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the complete and signed Request for Hearing filed in this matter. (Exhibit A, pages 13-17).
12. With due notice, a telephone hearing was scheduled for ██████████.
13. However, on ██████████, the Department’s representative at the time indicated that an essential witness was unavailable and requested that at least part of the hearing be rescheduled for a later date.
14. In response, Appellant’s representative stated that he did not object to an adjournment, but that he would like the undersigned Administrative Law Judge to contact Appellant’s representative and witnesses at the facility where Appellant resides.

15. The undersigned Administrative Law Judge then granted the request for adjournment and, after discussing a new hearing date with the parties, the matter was rescheduled for [REDACTED].
16. That same day, the undersigned Administrative Law Judge issued an Order of Adjournment and Notice of Rescheduled Hearing.

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, October 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, October 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, October 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, October 1, 2014 version, Nursing Facility Coverages 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. ██████████ 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 her representative bear the burden of proving by a preponderance of the evidence that the Department erred in finding that she did not require a Medicaid reimbursable Nursing Facility Level of Care.

In this case, Appellant's representative asserts that Appellant met the criteria for services by passing through Door 6 of the LOCD.

With respect to that door, the applicable field definition guidelines used by the Department provide:

Door 6: Behavior

This Door identifies applicants who display repetitive behavioral challenges. For this area, identify whether the applicant has displayed any challenging behaviors in the last 7 days. The 7-day look-back period is based on the eligibility determination date.

Wandering

Wandering describes those applicants who move about (in or out of doors) with no discernible, rational purpose. Individuals who wander may be oblivious to their physical or safety needs. Wandering behavior should be differentiated from purposeful movement (i.e., a hungry applicant moving about the apartment in search of food). Wandering may be by walking or by wheelchair. Do not include pacing as wandering behavior. Wandering can occur indoors or out of doors.

Field 68: 0 - Behavior not exhibited in last 7 days

Field 69: 1 - Behavior of this type occurred 1-3 days in last 7 days

Field 70: 2 - Behavior of this type occurred 4-6 days, but less than daily

Field 71: 3 - Behavior of this type occurred daily

Verbally Abusive

This section identifies applicants who threatened, screamed at, or cursed at others.

Field 72: 0 - Behavior not exhibited in last 7 days

Field 73: 1 - Behavior of this type occurred 1-3 days in last 7 days

Field 74: 2 - Behavior of this type occurred 4-6 days, but less than daily

Field 75: 3 - Behavior of this type occurred daily

Physically Abusive

This section identifies applicants who hit, shoved, scratched or sexually abused others.

Field 76: 0 - Behavior not exhibited in last 7 days

Field 77: 1 - Behavior of this type occurred 1-3 days in last 7 days

Field 78: 2 - Behavior of this type occurred 4-6 days, but less than daily

Field 79: 3 - Behavior of this type occurred daily

Socially Inappropriate/Disruptive

This section identifies applicants who made disruptive sounds, noisiness, or screaming, who performed self-abusive acts, inappropriate sexual behavior or disrobed in public, who smeared or threw food/feces, or who hoarded or rummaged through others' belongings.

Field 80: 0 - Behavior not exhibited in last 7 days

Field 81: 1 - Behavior of this type occurred 1-3 days in last 7 days

Field 82: 2 - Behavior of this type occurred 4-6 days, but less than daily

Field 83: 3 - Behavior of this type occurred daily

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.

<p>Scoring Door 6: The applicant must score under one of the following 2 options to qualify under Door 6.</p> <ol style="list-style-type: none">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.

Exhibit A, pages 30-33

Here, the LOCD was completed by ██████████ and, with respect to Door 6, she found that Appellant did not pass through that door because she had not exhibited any of the listed behaviors within the relevant look-back period. In support of that finding, ██████████ testified that she reviewed Appellant's charts and file for the ██████████ days prior to the LOCD, and there was no documentation regarding any delusions, hallucinations, wandering, verbal abuse, physical abuse, socially inappropriate behavior, disruptive behavior, or resistance to care. ██████████ also testified that, while she has heard claims from others that Appellant suffers from delusions and hallucinations, Appellant herself has denied having such behaviors to facility employees. During cross-examination, ██████████ did confirm that the mini-mental examination performed on the day of the LOCD, in which Appellant scored a ██████████ out of ██████████ would not test for delusions or hallucinations.

In response, Appellant's guardian testified that Appellant engages in periods of anger and has reported to her that she hears voices. Appellant's guardian also testified that, while she is not sure when, she has heard Appellant tell staff at the facility that she hears voices. Appellant's guardian further testified that, while she is not sure when it occurred, Appellant had an incident with another patient during which Appellant engaged in socially inappropriate/sexual behavior.

As provided above, Appellant and her representative bear the burden of proving by a preponderance of the evidence that the Department erred in finding that she did not require a Medicaid reimbursable Nursing Facility Level of Care.

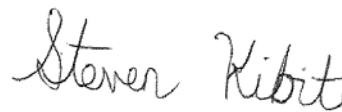
Given the record in this case, the undersigned Administrative Law Judge finds that Appellant has failed to meet that burden of proof. While Appellant's guardian alluded to past behaviors that may be relevant to a Door 6, she could not say that they occurred during the period of time relevant to the LOCD. Moreover, ██████████ also credibly testified that, based on the charts and file maintained by the facility, none of the behaviors listed in Door 6 occurred during the relevant look-back period. The LOCD contains specific look-back periods; the record demonstrates that Appellant did not exhibit of the behaviors during that period; and the Department's decision with respect to Door 6 must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Appellant did 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 Nick Lyon, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

[REDACTED]
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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.