STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
Phone: (877)-833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

,
Appellant
____________________/

CASE INFORMATION

Docket No.: 15-007404-NHE
Case No.:

Appellant:

Respondent:
Department Community Health

HEARING INFORMATION

Hearing Date:
Start Time:

Location
Telephone Hearing
Department Community Health
320 S. Walnut Street
Lansing, MI 48909

DECISION AND ORDER

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

After due notice, a hearing was held on . Shelli Murray, appeared and testified on the Appellant's behalf. an Appeals Review Officer (ARO) represented the Department of Community Health (Department). The Department's witnesses included , LTC Program Policy Specialist with the Department of Community Health and R.N. MDS Coordinator.

ISSUE

Did the Department properly determine that Appellant does not require a Medicaid reimbursable Nursing Facility (NF) Level of Care (LOC)?

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 Medicaid beneficiary, born and former resident of Pinecrest Medical Care Facility. (Exhibit A, p. 10; Testimony)

2. On or around the Appellant was found to be eligible for Medicaid reimbursed services in a Medicaid-certified nursing facility after an LOCD found the Claimant eligible under Door 1. (Exhibit A, p. 10; Testimony)

3. Between [redacted] and [redacted], the Appellant's conditions significantly changed requiring a new LOCD. (Testimony)

4. On [redacted], Pinecrest Medical Care Facility reassessed the Appellant under the NFLOCD guidelines and found the Appellant medically ineligible to receive Medicaid reimbursed NF services. The Appellant did not meet the LOCD criteria within the seven day look-back period for Doors 1, 2, 5 and 6 nor did she meet the criteria in Doors 3 and 4 within the fourteen day look-back period. The three criteria required in Door 7 were also not met. (Exhibit A, p. 11; Testimony)

5. On [redacted], the Michigan Administrative Hearing System (MAHS) received the Appellant's request for hearing. (Exhibit A, pp. 12-16)

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.

The Michigan Department of Community Health (MDCH) implemented functional/medical eligibility criteria for Medicaid nursing facilities. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

There are five components that determine beneficiary eligibility and Medicaid nursing facility reimbursement.

- Verification of financial Medicaid eligibility
- PASARR Level I screening
- Physician-written order for nursing facility services
- A determination of medical/functional eligibility based upon a web-based version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online at the time the resident was either Medicaid eligible or Medicaid pending and conducted within the timeframes specified in the Michigan Medicaid Nursing Facility Level of Care Determination subsection of this chapter.
- Computer-generated Freedom of Choice (FOC) form signed and dated by the beneficiary or the beneficiary's representative.

Medicaid Provider Manual (MPM) §5 *et seq*
Beneficiary Eligibility and Admission Process, p. 7 of 16, July 1, 2015.

The MPM, [Nursing Facility Eligibility and Admission Section] lists the policy for admission and continued eligibility processes for Medicaid-reimbursed nursing facilities. This process includes

a complete LOCD prior to the start of Medicaid reimbursable services and subsequent or additional web-based LOCD upon determination of a significant change in the beneficiary's condition as noted in provider notes or minimum data sets and that these changes may affect the beneficiary's current medical/functional eligibility status. *See* MPM 5.1.D

Section 5.1.D.1 further references the use of an online Level of Care Determination (LOCD) tool.

The Michigan Medicaid Nursing Facility LOC Determination's medical/functional criteria include seven domains of need:

- Activities of Daily Living,
- Cognition,
- Physician Involvement,
- Treatments and Conditions,
- Skilled Rehabilitative Therapies, Behavior, and
- Service Dependency.

Individual residents or their authorized representatives are allowed to appeal either a determination of financial ineligibility to the Department of Human Services or medical/functional eligibility to the Department of Community Health:

> **APPEALS – Medical/Functional Eligibility**
>
> A determination by the web-based Michigan Medicaid Nursing Facility LOC Determination that a Medicaid financially pending or Medicaid financially eligible beneficiary is not medically/functionally eligible for nursing facility services is an adverse action. If the Medicaid financially pending or Medicaid financially eligible beneficiary or their representative disagrees with the determination, he has the right to request an administrative hearing before an administrative law judge. … MPM, §5.2.A, NF Eligibility, page 14, January 1, 2015

An LOCD is required to be done in order to receive services in a nursing facility. If the LOCD shows the resident is ineligible, the resident will be discharged from the facility. Under the LOCD, there is a look back period of 7 days for Doors 1, 2, 5, and 6 and a 14 day look back period for Doors 3 & 4. To be eligible under Door 7, the resident must have been in the facility for over 1 year, must be in need of a nursing facility level of care to maintain current functional status, and there must be no other community, residential, or informal services available to meet the applicant's needs.

The Department presented testimony and documentary evidence that Appellant did not meet any of the criteria for Doors 1 through 7. The NF completed a LOCD and determined the Appellant was not eligible for continued Medicaid covered care in their skilled nursing facility.

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

The NF witness reviewers determined that Appellant was independent with bed mobility, transfers, toilet use and eating. As such, Appellant did not qualify through Door 1.

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."

The NF witness reviewers determined that the Appellant had okay short-term memory was independent with her cognitive skills and could make herself understood. Therefore, the Appellant did not qualify under Door 2.

Door 3
Physican 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 Physicians Order changes in the last 14 days, OR
2. At least two Physician Visit exams AND at least two Physicians Order changes in the last 14 days.

Appellant had 0 physician visit and 1 physician order change within 14 days of the assessment. As such, Appellant did not qualify under Door 3.

Door 4
Treatments and Conditions

Scoring Door 4: The applicant must score "yes" in at least one of the nine categories above and have a continuing need to qualify under Door 4.

In order to qualify under Door 4 the applicant must receive, within 14 days of the assessment date, any of the following health treatments or demonstrated any 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

The NF witness reviewers determined that Appellant did not meet the criteria listed for Door 4 at the time of the assessment even though the Appellant used daily oxygen as the oxygen use did not affect the Appellant's functioning or need for care.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The Appellant 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.

The NF witness reviewers determined that Appellant did not meet the criteria listed for Door 5 at the time of the assessment.

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.

The NF witness reviewers determined that Appellant did not meet the criteria set forth above to qualify under Door 6 because she exhibited none of the listed behaviors.

Door 7
Service Dependency

Scoring Door 7: The applicant must be a current participant and demonstrate service dependency under Door 7.

The LOC Determination provides that the Appellant could qualify under Door 7 if he is currently (and has been a participant for at least one (1) year) being served by either the MI Choice Program, PACE program, or Medicaid reimbursed nursing facility, requires ongoing services to maintain current functional status, and no other community, residential, or informal services are available to meet the applicant's needs.

The NF witness reviewers determined that Appellant did not qualify under Door 7 because the Appellant had not been a program participant for at least one year.

The Appellant's Representative argued that she doubted the Appellant was independent with her ADL's and that the oxygen use did not affect her functioning or need for care. The Representative based her arguments on the fact staff at the facility had told her as much. Those alleged staff members however did not participate in the hearing. Additionally, the Representative argued that if the Appellant was independent, it was because of the room set up at the facility. The room setup however is not a criterion that is used in determining whether or not an individual is independent or not.

Consequently, the evidence presented by the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on the review conducted on [redacted].

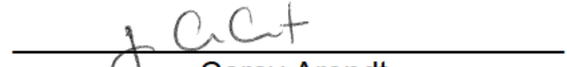
As such, I find the Appellant failed to prove, by a preponderance of the evidence that the Department erred in reviewing her medical/functional eligibility status. Appellant does not require Medicaid reimbursed NF level of care as demonstrated by the application of the LOCD tool.

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 Nursing Facility Level of Care.

IT IS THEREFORE ORDERED that:

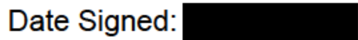
The Department's decision is AFFIRMED.

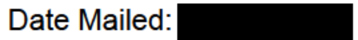


Corey Arendt
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Health and Human Services

cc:

CA/hj

Date Signed: 

Date Mailed: 

***** 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.