

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 15-004314 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, a telephone hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appeals Review Officer, represented the Michigan Department of Health and Human Services ("DHHS" or "Department"). ██████████, Long Term Care Program Policy Specialist with the Department; ██████████, a registered nurse and project manager with MPRO; ██████████, ██████████ Coordinator at ██████████); and ██████████ Director of Social Work at ██████████; testified as witnesses for the Department.

ISSUE

Did the Department properly determine that Appellant did not require a Medicaid 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 male who has been admitted as a resident at Whitehall. (Exhibit A, page 10; Testimony of ██████████).
2. On ██████████ staff conducted a Michigan Medicaid Nursing Facility Level of Care Determination ("LOCD") for Appellant. (Exhibit A, page 10).
3. In that LOCD, Appellant was found to be eligible to receive Medicaid reimbursable services at the facility by passing through Door 1 of the LOCD evaluation tool. (Exhibit A, page 10).

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 11).
5. That same day, the facility contacted MPRO and requested a nursing facility level of care exception for Appellant. (Testimony of ██████████).
6. MPRO reviewed Appellant's case on ██████████ and determined that Appellant did not meet the criteria for an exception. (Exhibit A, page 12; Testimony of ██████████).
7. That same day, MPRO also issued a written notice to the Appellant stating that he did not qualify for Medicaid nursing facility level services. (Exhibit A, page 14l).
8. On ██████████ the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter. (Exhibit A, page 15).

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, January 1, 2015 version, Nursing Facility Coverages Chapter, pages 7-15.

Section 5.1.D.1 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, January 1, 2015 version,

Nursing Facility Coverages Chapter, pages 9-11. A nursing facility resident must also meet the outlined criteria on an ongoing basis. See MPM, January 1, 2015 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, January 1, 2015 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:

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, the Department and [REDACTED] determined that Appellant did not pass through any of the seven Doors on [REDACTED] and was therefore ineligible for Medicaid reimbursable nursing facility level of care.

Given the evidence and testimony in this case, it is clear that the findings regarding the doors must be affirmed. Appellant testified that he still has shoulder pain and believes he needs nursing facility services, but he also did not dispute any of the Department’s witnesses’ testimony regarding specific doors or the information they used. Accordingly, the record demonstrates that Appellant is independent in all the tasks identified in Door 1; his medical conditions or the effects of those conditions does not meet the criteria for passing through Doors 2, 4, or 6; any medical treatment Appellant receives does not meet the criteria required by Doors 3, 4, 5 or 6; and Appellant cannot demonstrate service dependency as required by Door 7.

In addition to challenging the LOCD, Appellant also appears to disagree with MPRO’s exception decision. 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, 2015 version
Nursing Facility Coverages 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:

- 1001 • Applicant performs late loss ADLs (bed mobility, toileting, transferring and eating) independently but requires an unreasonable amount of time

- 1002 • Applicant's performance is impacted by consistent shortness of breath, pain or debilitating weakness during any activity

- 1003 • Applicant has experienced at least two falls in the home in the past month

- 1004 • Applicant continues to have difficulties managing medications despite the receipt of medication set up services

- 1005 • Applicant exhibits evidence of poor nutrition, such as continued weight loss, despite the receipt of meal preparation services
- 1006 • 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:

- 2001 • Wandering
- 2002 • Verbal or physical abuse
- 2003 • Socially inappropriate behavior
- 2004 • Resists care

Treatments

- 3000 The applicant has demonstrated a need for complex treatments or nursing care.

Exhibit A, page 13

Here, during the hearing, the MPRO Nurse Reviewer went through each of the exception criteria and the summary notes of the MPRO review. She also explained why MPRO determined that the Appellant did not meet any of the exception criteria based on the information provided.

In response, Appellant merely testified that he still has shoulder pain and believes he needs nursing facility care. However, the existence of Appellant's shoulder pain is not in dispute and the above policy is clear that Appellant must meet the specific criteria identified in policy. Appellant makes no attempt to identify any specific exception that he believes he meets and does not dispute the information relied upon by the Department's witness.

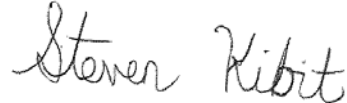
Based on that information and the applicable policy in this case, the Department properly found that Appellant also did not meet the criteria for exception eligibility for nursing facility services as described in the Medicaid Provider Manual.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Appellant did not require a Medicaid 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 Health and Human Services

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.