

**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:

██████████

Docket No. 15-005515 NHE

██████████

██████████

Appellant

_____ /

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 her own behalf. ██████████ Appellant's grandson, and ██████████ Appellant's son-in-law, also testified as witnesses for Appellant. ██████████ Appeals Review Officer, represented the Michigan Department of Health and Human Services ("DHHS" or "Department"). ██████████, Long Term Care Program Policy Specialist with the Department; ██████████, social worker at ██████████ of ██████████"); ██████████, unit manager at ██████████; and ██████████, business officer manager 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 an ██████ year-old female who has been admitted as a resident at ██████████. (Exhibit A, page 7; Testimony of Appellant).

2. On ██████████ staff conducted a Michigan Medicaid Nursing Facility Level of Care Determination (“LOCD”) for Appellant. (Exhibit A, page 7).
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 due to her need for limited assistance with bed mobility and transferring. (Exhibit A, page 7).
4. 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 8).
5. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter with respect to that determination. (Exhibit A, page 19).

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.

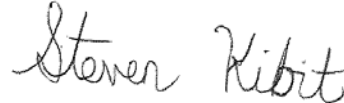
Given the evidence and testimony in this case, it is clear that the findings regarding the doors must be affirmed. Appellant testified that everyone is good to her at the facility, she has no place else to go, and that she cannot walk by herself due to problems with her legs and feet. However, the facility and Department are required to look at the specific criteria and look-back periods outlined in policy and, even if Appellant needs adaptive equipment to walk, there is no evidence that Appellant needs assistance with any of the specific tasks identified in Door 1 to pass through that door. Moreover, there is no evidence that Appellant’s medical conditions, or the effects of those conditions, meet the criteria for passing through Doors 2, 4, or 6, and any medical treatment Appellant receives does not meet the criteria required by Doors 3, 4, 5 or 6. Lastly, Appellant has not been a program participant for at least a year as required by Door 7 and, even if she was, she failed to demonstrate service dependency given her limited needs.

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.