

**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.: 15-007064-NHE

Case No.: ██████████

Appellant:

██████████

Respondent:

██████████

**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 June 25, 2015. Robert Walski, Appellant's son appeared and testified on Appellant's behalf. The Appellant and ██████████ Unit Manager at ██████████ also offered testimony on the Appellant's behalf. Vincent Moon an Appeals Review Officer (ARO) represented the Department of Community Health (Department). The Department's witnesses included ██████████, RN, ██████████ Project Manager, ██████████ of Nursing at ██████████ and ██████████ Director of Social Services at ██████████.

**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 current resident of ██████████. (Exhibit A, p. 10; Testimony)
2. On or around ██████████ the Appellant was admitted to ██████████ with private funding. (Exhibit A, p. 12)

3. On ██████████, Appellant was assessed by ██████████ under the Nursing Facility (NF) Level of Care Determination (LOCD) and found to be ineligible to receive Medicaid reimbursed NF services. Appellant did not meet the LOCD criteria within the seven day look-back period for Doors 1, 2, 5 and 6, nor did he 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, pp. 10, 17-21; Testimony)
4. On ██████████, Appellant's son contacted the Michigan Peer Review Organization (MPRO) and requested a NFLOC immediate review. (Exhibit A, pp. 11-13; Testimony)
5. On ██████████, MPRO reviewed the Appellant's medical records supplied by ██████████ and determined the Appellant did not meet the NFLOC Exception Criteria. (Exhibit A, pp. 11, 12; Testimony)
6. On ██████████, the Department sent the Appellant an Advance Negative Action Notice. The notice indicated the Appellant did not qualify for NFLOC. (Exhibit A, p. 14; Testimony)
7. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Appellant's request for hearing. (Exhibit A, p. 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.

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 witness from 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, toilet use, transferring 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 a short-term memory problem that was consistent with dementia. However, the short-term memory problems did not affect the Appellant's ability to perform her daily tasks and activities of daily living as the Appellant was able to do things on her own without guidance and supervision. As a result, the reviewer found the

Appellant to be modified independent and able to make herself understood. Therefore, the Appellant did not qualify under Door 2.

**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 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 1 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.

**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.

MPRO’s Pacer Project Manager testified that she reviewed Appellant’s medical records to determine if he was eligible for an exception to the NFLOC criteria and determined that Appellant did not meet any exceptions for Frailty, Behaviors, or Treatments.

Appellant’s son testified that the Appellant suffered from dementia and could possibly meet the exceptions under Door number 2. However, the NF witness who reviewed the Appellant’s medical records was of the opinion that although the Appellant had short term memory issues, they did not affect the Appellant’s ability to perform her activities of daily living (during the appropriate look back period) or affect her ability to make herself understood.

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Appellant's son also argued the Appellant had fall issues, incontinence issues and physician order changes that exceeded the requirements under door 3. The incidents argued however all fell outside of the appropriate look back periods.

Consequently, the evidence presented by the Department adequately demonstrated that the Appellant did not meet LOCD eligibility on the review conducted on April 24, 2015 or the immediate review completed by MPRO on May 1, 2015.

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.

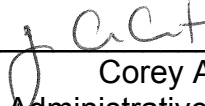
  
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**DECISION AND ORDER**

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.