



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 15-021121
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. [REDACTED], the Petitioner, appeared on his own behalf. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Department). [REDACTED], Long Term Care Program Policy Specialist; [REDACTED], RN, PACER Project Manager with MPRO; [REDACTED], LPN, MDS Coordinator; [REDACTED], Social Services Director, appeared as witnesses for the Department.

During the hearing proceedings, the Department's hearing summary packet for Petitioner's case was admitted Exhibits A-G, as marked, however, Exhibit D was inadvertently not included. A copy of Exhibit D was submitted later in the day on [REDACTED] and has been admitted.

ISSUE

Did the Department properly determine that the Petitioner does not require a 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. The Petitioner is a [REDACTED]-year-old Medicaid beneficiary and resident of [REDACTED], a long term care facility.

2. Medicaid policy requires nursing facility residents to meet the medical/functional criteria on an ongoing basis. The Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) medical/functional criteria include seven domains of need: Activities of Daily Living, Cognitive Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitation Therapies, Behavior, and Service Dependency. *Medicaid Provider Manual, Nursing Facility, Coverages, October 1, 2015, pp. 7-12.*
3. 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. *Medicaid Provider Manual, Nursing Facility, Coverages, October 1, 2015, p. 12.*
4. On [REDACTED], the Petitioner was initially assessed under the LOCD evaluation tool and was found to be eligible for nursing facility placement via entry through Door 1. (Exhibit B; Hearing Summary)
5. On [REDACTED], the Petitioner was assessed under the LOCD evaluation tool and was found to be ineligible for nursing facility placement based upon failure to qualify via entry through one of the seven doors. (Exhibit C; Hearing Summary)
6. On [REDACTED], MPRO completed the requested exception review and denied eligibility. (Exhibits D and E; Hearing Summary)
7. On [REDACTED], MPRO issued an Adequate Action Notice. (Exhibit E)
8. On [REDACTED], Petitioner filed a Request for Hearing contesting the determination. (Exhibit F)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 Health and Human Services ("MDHHS") 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. The Medicaid Provider Manual, Nursing Facilities Chapter, Coverages portion, Section 5 Beneficiary Eligibility and Admission Process, lists the policy for admission and continued eligibility process as well as outlines

functional/medical criteria requirements for Medicaid-reimbursed nursing facility, services. *Medicaid Provider Manual, Nursing Facility, Coverages, October 1, 2015, pp. 7-14.*

Section 5.1 of the Medicaid Provider Manual, Nursing Facilities Chapter, Coverages portion, references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool (*Michigan Medicaid Nursing Facility Level of Care Determination*, or (LOCD). The LOCD is mandated for all Medicaid-reimbursed admissions to nursing facilities. 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. *Medicaid Provider Manual, Nursing Facility, Coverages, October 1, 2015, pp. 7-12.*

The LOCD Assessment Tool consists of seven-service entry Doors. (Exhibits C and G). The doors are: Activities of Daily Living, Cognitive Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, and Service Dependency. In order to be found eligible for Medicaid Nursing Facility placement, the Petitioner must meet the requirements of at least one Door.

Door 1 **Activities of Daily Living (ADLs)**

The LOCD Field Definition Guidelines, pp. 2-6 of 18, provides that the Petitioner must score at least six points to qualify under Door I.

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

The LOCD Field Definition Guidelines, pp. 6-10 of 18, provides that to qualify under Door 2 Petitioner must:

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

The LOCD Field Definition Guidelines, pp. 10-11 of 18, indicates that to qualify under Door 3, Petitioner must:

Scoring Door 3: The applicant must meet either of the following to qualify under Door 3.

1. At least one Physician Visit for examination AND at least four Physician Order changes in the last 14 days, OR
2. At least two Physician Visits for examinations AND at least two Physician Order changes in the last 14 days.

Door 4
Treatments and Conditions

The LOCD Field Definition Guidelines, pp. 11-12 of 18, indicates that in order to qualify under Door 4, the Petitioner must receive, within 14 days of the assessment date, any of the following health treatments or have 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

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

Door 5 **Skilled Rehabilitation Therapies**

The LOCD Field Definition Guidelines, pp. 12-13 of 18, addresses skilled rehabilitation therapies (Speech Therapy (ST), Occupational Therapy (OT), and Physical Therapy (PT), and provides that to qualify under Door 5 Petitioner must:

Scoring Door 5: The individual must have required at least 45 minutes of active PT, OT, or ST (scheduled or delivered) in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5.

Door 6 **Behavior**

The LOCD Field Definition Guidelines, pp. 13-15 of 18, provides a listing of behaviors recognized under Door 6 (Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, and Resists Care) as well as problem conditions (Delusions and Hallucinations), and provides that to qualify under Door 6 Petitioner must:

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

The LOCD Field Definition Guidelines, p. 16 of 18, addresses service dependency and provides that Petitioner must meet all three criteria to qualify under Door 7:

1. Participant for at least one consecutive year (no break in coverage)
2. Requires ongoing services to maintain current functional status
3. No other community, residential, or informal services are available to meet the needs (i.e. only the current setting can provide service needs).

Scoring Door 7: The applicant must be a current participant, demonstrate service dependency and meet all three criteria to qualify under Door 7.

The LPN MDS Coordinator's testimony went over the analysis for each of the seven doors for Petitioner's case. The Petitioner did not qualify through any of the seven Doors on the [REDACTED], LOCD. (Exhibit C) However, an exception review was requested.

Exception Process

The RN PACER Project Manager with MPRO testified and provided documentation that MPRO received the request for LOCD Exception Process; Petitioner's records were requested and reviewed; and MPRO determined Petitioner did not meet the exception review criteria. (Exhibits D and E)

Section 5.1 of the Medicaid Provider Manual, Nursing Facilities Chapter, Coverages portion, also references exception process:

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 a valid online Michigan Medicaid Nursing Facility LOC Determination (LOCD), 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 may be initiated only when the provider telephones the MDHHS designee on the date the provider

conducted a valid online LOCD and requests the LOC Exception Review on behalf of the LOCD ineligible beneficiary. The Nursing Facility LOC Exception Criteria is available on the MDHHS website. A beneficiary needs to trigger only one of the LOC Exception criteria to be considered as eligible under the Exception Review.

*Medicaid Provider Manual,
Nursing Facility, Coverages,
October 1, 2015, p.12.*

The RN PACER Project Manager went through each of the exception criteria in detail and testified that Petitioner did not meet any of the exception criteria. (See also Exhibits D and E)

A final denial letter was issued on [REDACTED], because Petitioner did not meet the criteria for any of the seven Doors of the LOCD assessment or for the exception process. (Exhibits C-E)

In this case, the Petitioner did not provide an argument or evidence contesting the LOCD scoring determination or the exception process determination. Rather, Petitioner only questioned why the nursing facility completed another assessment. Policy requires that a subsequent LOCD be completed when there has been a significant change in condition that may affect the resident's current medical/functional eligibility status. *Medicaid Provider Manual, Nursing Facility, Coverages, October 1, 2015, p. 12.* The Department explained that there had been a change in Petitioner's condition that affected his medical/functional eligibility status. Accordingly, the nursing facility was required to complete another LOCD for Petitioner.

The Department based its decision on the available information at the time of this determination. The medical documentation did not establish that Petitioner met any of the seven doors of the LOCD or any of the exception criteria. Accordingly, the Department properly determined that Petitioner is not eligible for Medicaid nursing facility services.


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 the Petitioner does not require Medicaid Nursing Facility Level of Care.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED**.

CL/cg



Colleen Lack

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]

Agency Representative

[REDACTED]