



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 31, 2016
MAHS Docket No.: 15-023106
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. Petitioner did not appear at the hearing. Petitioner was represented at the hearing by Attorney [REDACTED], (P [REDACTED]) [REDACTED], and [REDACTED], appeared as a witness for Petitioner. [REDACTED], Appeals Review Officer; [REDACTED], LOCD Policy Specialist; [REDACTED], director of Health Care; [REDACTED], Registered Nurse; and [REDACTED], Social Worker, testified on behalf of the Department of Health and Human Services (Department).

ISSUE

Did the Department properly determine that Petitioner did not require a Medicaid reimbursable 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. Petitioner is an [REDACTED] year old Medicaid beneficiary, born [REDACTED], who is a current resident of [REDACTED] Level of Care Center, in Long Term Care.
2. Petitioner has been diagnosed with Vascular Dementia, which was her original admission diagnosis.

3. On [REDACTED], [REDACTED] Care Center conducted an LOCD assessment under the Nursing Facility (NF) Level of Care Determination (LOCD) and determined Petitioner to be eligible to receive Medicaid reimbursed services in a nursing facility under Door 3-required Limited Assistance in Toileting. (State's Exhibit a pages 10-17)
4. On [REDACTED], [REDACTED] Care Center conducted a subsequent online LOCD for Petitioner based upon a significant change in condition. [REDACTED] determined that Petitioner did not meet the LOCD criteria within the seven day look back period from [REDACTED] 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 (State's Exhibit A pages 18-25)
5. On [REDACTED], [REDACTED] sent Petitioner's representative an Adequate Action Notice stating that Petitioner did not qualify for nursing facility level services based on the Michigan Nursing Facility Level of Care Determination under any of the following eligibility categories: Activities of Daily Living, Cognition, Physician Involvement, treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependencies. The Legal basis for this decision is 42 CFR 440.230 (d). (State's Exhibit A page 26)
6. On [REDACTED], Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System (MAHS).

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 necessary components for determining eligibility for 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, Nursing Facility Coverages, §5 Beneficiary Eligibility and Admission Process, p. 7 January 1, 2015*].

The *Medicaid Provider Manual, Nursing Facility Coverages, Section 5 - Beneficiary Eligibility and Admission Process* lists the policy for admission and continued eligibility processes for Medicaid-reimbursed nursing facilities. This process includes a 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. (Emphasis supplied) See Medicaid Provider Manual Subsection 5.1.D

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

The LOCD is required 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 NF resident's current medical/functional eligibility status.

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:

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. . . . *Medicaid Provider Manual, §5.2.A.2., Nursing Facility Coverages, p. 14, January 1, 2015.*

A LOCD is required to be done in order to continue services in a nursing facility when there has been a significant change in the resident's condition. If the subsequent 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 Petitioner did not meet any of the criteria for Doors 1 through 7. Respondent's witness completed a LOCD on November 3, 2015 and determined the Petitioner 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 Department's witness determined that Petitioner was independent for Bed Mobility, and Eating, Toilet Use and Transferring. Petitioner's representative argues that Petitioner cannot get into or out of bed on her own. Respondent's representative argues that policy dictates a sleeping surface be used rather than specifically a bed. Accordingly, Petitioner did not qualify under 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. Short term memory was Okay. Seems/appears to recall after 5 minutes
2. Cognitive skills were modified independent. The applicant organized daily routine and made safe decisions in familiar situations, but experienced some difficulty in decision-making when faced with new tasks or situations.
3. Making self-understood (expressing information content, however able). The applicant expresses ideas clearly, without difficulty.

The Department's witness determined that Petitioner's short-term memory was okay and that her cognitive skills were modified independent. The Department's witness indicated that Petitioner could make herself understood during the Brief Interview for Mental Status (BIMS), but Petitioner was determined to be modified independent with regard to cognitive skills because she does have some difficulty making decisions in new situations. Petitioner's Representative testified that Petitioner is diagnosed with Vascular Dementia and the disease is non-reversible and progressive. Petitioner was able to respond to all questions asked of her at the time of the assessment. As such, Petitioner 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.

The Department's witness determined Petitioner had no physician visits and no physician order changes within 14 days of the assessment. However, evidence on the record indicates that Petitioner was found to be unresponsive and pulseless was taken to the hospital on [REDACTED] where she remained until [REDACTED], which was after the date of assessment. As such, Petitioner 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 Department's witness determined that Petitioner did not meet the criteria listed for Door 4 at the time of the assessment as she had none of the health treatments or conditions listed above.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The Petitioner 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 Department's witness determined that Petitioner did not meet the criteria listed for Door 5 at the time of the assessment. Petitioner was not receiving any skilled rehabilitation therapies within the past 7 days.

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 Department's witness found the Petitioner did not meet the criteria set forth above to qualify under Door 6. A review of her records showed that she did not exhibit any of the listed behaviors within the 7-day look back period.

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 Petitioner could qualify under Door 7 if she 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.

Here, Petitioner no longer needed ongoing nursing facility services to maintain her current functional status, and other community, residential, or informal services that are available to Petitioner would be sufficient to meet Petitioner's needs. The nursing

facility witness determined that Petitioner's needs could be met in an Assisted Living Facility or Adult foster Care setting. Accordingly, Petitioner did not qualify under Door 7.

The LOCD process is designed to be a snapshot of an individual's condition versus that person's need for Medicaid covered NF services. When the LOCD shows the individual does not meet the eligibility criteria for nursing facility level of care, other Medicaid covered services should be considered for that individual. Petitioner may be financially eligible for Medicaid covered services, but her current needs may be met through Medicaid covered programs and services available in the community.

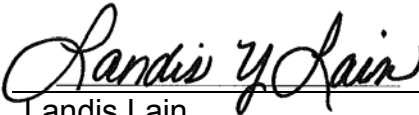
Based on the evidence presented the Department adequately demonstrated that the Petitioner did not meet LOCD eligibility on [REDACTED]. The undersigned ALJ finds that the Appellant failed to meet her burden of proving that the Department erred in reviewing her medical/functional eligibility status. The preponderance of the evidence in this case shows that the Appellant did not require Medicaid reimbursed NF level of care as demonstrated by the LOCD completed on [REDACTED].

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 Appellant did not require a Medicaid Nursing Facility Level of Care as demonstrated by the application of the LOCD tool on [REDACTED].

IT IS THEREFORE ORDERED that:

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



Landis Lain
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

LL [REDACTED]

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]

Authorized Hearing Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]

Counsel for Petitioner

[REDACTED]

Agency Representative

[REDACTED]