



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-000112
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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], Petitioner's daughter, appeared and testified on Petitioner's behalf. Petitioner also testified on her own behalf. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department). [REDACTED], Long Term Care Program Policy Specialist with the Department; [REDACTED], [REDACTED] Coordinator at [REDACTED]; and [REDACTED] [REDACTED] a social worker at [REDACTED]d; testified as witnesses for the Department.

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. Petitioner is an [REDACTED]-year old Medicaid beneficiary who has been admitted as a resident at [REDACTED] (Exhibit A, page 10; Testimony of Petitioner's representative).
2. On [REDACTED], around the time of her admission, [REDACTED] staff conducted a Michigan Medicaid Nursing Facility Level of Care Determination ("LOCD") for Petitioner. (Exhibit A, pages 10-17).

3. In that LOCD, Petitioner 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, pages 10-17).
4. On [REDACTED] staff conducted another LOCD for Petitioner. (Exhibit A, pages 18-25).
5. In that second LOCD, Petitioner 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, pages 18-25).
6. On [REDACTED] also sent Petitioner written notice that, based on the LOCD and a review of her long care needs, it had determined that Petitioner did not qualify for nursing facility level services. (Exhibit A, page 26).
7. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed in this matter regarding the determination. (Exhibit A, pages 27-35).

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.

Effective November 1, 2004, the Michigan Department of Health and Human Services (MDHHS) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements.

The Medicaid Provider Manual (MPM), Nursing Facilities Coverages Chapter, describes the policy for admission and continued eligibility for Medicaid-reimbursed nursing facility, MI Choice, and PACE services. Specifically, the five components that determine beneficiary eligibility and Medicaid nursing facility reimbursement include a verification of financial Medicaid eligibility; a PASARR Level I screening; a 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); and a signed and dated computer-generated Freedom of Choice (FOC) form signed and dated by the beneficiary or the beneficiary's

representative. See MPM, October 1, 2015 version, Nursing Facility Coverages Chapter, page 7.

A LOCD is therefore mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE. See MPM, October 1, 2015 version, Nursing Facility Coverages Chapter, pages 9-11. Moreover, even after admission, a nursing facility resident must also continue to meet the outlined criteria in the LOCD on an ongoing basis. See MPM, October 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, October 1, 2015 version, Nursing Facility Coverages Chapter, page 11; Exhibit A, pages 36-53.

The [REDACTED] LOCD was the basis for the action at issue in this case. In order to be found eligible for Medicaid nursing facility coverage the Petitioner 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 the facility determined that Petitioner did not pass through any of the seven Doors in the [REDACTED] LOCD and was therefore ineligible for Medicaid reimbursable nursing facility level of care.

In support of that decision, Longstreet testified that she completed the LOCD and found that Petitioner did not meet the criteria for any of the seven doors. With respect to Door 2 specifically, [REDACTED] testified that the determination was based upon interviews with Petitioner; interviews with staff; a review of the nurses' notes; and a review of the Brief Interview for Mental Status (BIMS) assessment completed by [REDACTED]. [REDACTED] further testified regarding the BIMS assessment and her determination that Petitioner has mild cognitive deficits.

In response, Petitioner's representative testified that, while Petitioner does well in facility because it is a controlled environment, she does not well without structure and routine. Petitioner's representative also testified that Petitioner sometimes gets lost in the facility or is unaware of what time it is.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in terminating her services.

Given the evidence in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must be affirmed.

Per policy, Respondent is required to look at the specific criteria and look-back periods outlined in the LOCD and, given that criteria, the findings regarding most of the doors are undisputed. For example, while Petitioner's representative testified that Petitioner still needs assistance in some tasks, there is no evidence that she needs assistance with the specific tasks identified in Door 1. Moreover, the record clearly demonstrates that Petitioner medical conditions or the effects of those conditions do not meet the criteria for passing through Doors 4 or 6; any medical treatment Petitioner receives does not meet the criteria required by Doors 3, 4, 5 or 6; and that she does not pass through Door 7 because she has not been a program participant for a year.

The parties do dispute Door 2 and, as discussed above, to qualify through Door 2, a beneficiary must be either (1) "Severely Impaired" in decision making; (2) have a memory problem and be "Moderately Impaired" in decision making; or (3) have a memory problem and be only "Sometimes Understood" or "Rarely/Never Understood." Here, it is undisputed that Petitioner has a memory problem, but can be understood. Therefore, Petitioner must be at least "Moderately Impaired" in her cognitive skills for daily decision making to pass through Door 2.

With respect to cognitive skills for daily decision making, the Field Definition Guidelines for the LOCD provides:

Field 34: Independent

Select this field when the applicant's decisions were consistent and reasonable (reflecting lifestyle, culture, values); the applicant organized daily routine and made decisions in a consistent, reasonable, and organized fashion.

Field 35: Modified Independent

The applicant organized daily routines and made safe decisions in familiar situations, but experienced some difficulty in decision-making when faced with new tasks or situations.

Field 36: Moderately Impaired

The applicant's decisions were poor; the applicant required reminders, cues, and supervision in planning, organizing, and correcting daily routines.

Field 37: Severely Impaired

The applicant's decision-making was severely impaired; the applicant never (or rarely) made decisions.

Exhibit A, page 44

Given those field definitions, Petitioner also did not pass through Door 2. Even Petitioner's representative testified that Petitioner does well in structured or routine environments and only has difficulties in new or unfamiliar environments, which confirms the facility's finding that Petitioner is only "Modified Independent" in her cognitive skills for daily decision making and which is insufficient for her to pass through Door 2.

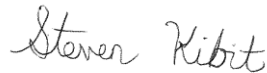
Accordingly, Respondent properly terminated Petitioner's services pursuant to the above policy and on the basis that she no longer met the functional eligibility criteria for the program.

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 a Medicaid Nursing Facility Level of Care.

IT IS, THEREFORE, ORDERED that:

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



SK/db

Steven Kibit
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

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]

DHHS Department Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Agency Representative

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]