



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.: 16-001582
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 the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner appeared on behalf of the Petitioner. [REDACTED], General Manager Quality and Training; and [REDACTED], Social Work Supports Coordinator represented the Respondent, the [REDACTED].

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 Department contracts with the [REDACTED] to provide MI Choice Waiver Services to eligible beneficiaries.
2. The Waiver agency must implement the MI Choice Waiver program in accordance with Michigan's waiver agreement, Department policy and its contract with the Department.
3. On [REDACTED], Petitioner is a Medicaid beneficiary who requested services through the MI Choice Waiver Program.
4. Petitioner's date of birth is [REDACTED].

5. On [REDACTED], an Intake Specialist from the [REDACTED] conducted a telephone screen with Appellant, which showed that Petitioner was not eligible for assessment for the MI Choice Waiver Program.
6. The [REDACTED] placed Petitioner on the Care Management Wait List.
7. On [REDACTED], the Michigan Administrative Hearings system received petitioner's Request for a Hearing.

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, Coverages and Limitations Chapter, Nursing Facilities Section, lists the policy for admission and continued eligibility process as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MIChoice, and PACE services.

Section 5.1 of the Medicaid Provider Manual Nursing Facilities Section references the use of an online Michigan Medicaid Nursing Facility Level of Care Determination tool (*Michigan Medicaid Nursing Facility Level of Care Determination*, or (LOC). The LOC must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE on and after November 1, 2004. All Medicaid beneficiaries who reside in a nursing facility on November 1, 2004, must undergo the evaluation process by their next annual MDS assessment date.

Nursing facilities, MIChoice, and PACE have multiple components for determining eligibility for services. The Medicaid Provider Manual Nursing Facilities Section and the *Nursing Facility Eligibility and Admission Process, November 1, 2004, Pages 1-7* explain the components that comprise the eligibility and admission process for nursing facility eligibility and admission. The LOC is the assessment tool to be utilized when determining eligibility for admission and continued Medicaid nursing facility coverage. There are five necessary components for determining eligibility for Medicaid nursing facility reimbursement.

- Verification of financial Medicaid Eligibility
- PASARR Level I
- 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.

See MDHHS Nursing Facility Eligibility and Admission Process, (Page No. and Date).

The Level of Care Assessment Tool consists of seven-service entry Doors. (Exhibit 1, Attachment 1). The doors are: Activities of Daily Living, Cognition, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or 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 LOC, page 3 of 9 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

She was independent with bed mobility, transfers, toileting and eating in the seven days prior to the NFLOC. Accordingly, Petitioner did not qualify under Door 1.

Door 2
Cognitive Performance

The LOC, pages 3 – 4, provides that to qualify under Door 2 and 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.”

Petitioner was able to recall three words in the test of her short term memory, indicated she was able to make independent and safe decisions regarding her tasks of daily life, including medication management, and was able to clearly. As such, Petitioner did not qualify under Door 2.

Door 3
Physician Involvement

The LOC indicates that to qualify under Door 3, the Petitioner must:

[M]eet either of the following to qualify under

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.

In the 14 days prior to the NFLOC, had seen the doctor one time, and had not had any provider changes. Petitioner did not qualify under Door 3

Door 4
Treatments and Conditions

The LOC, page 5, 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 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

14 days prior to the NFLOC had not received treatment for pressure sores, IV or parental feedings, IV medications, and end stage care, daily tracheostomy care, daily respiratory care, or daily suctioning; she had not had pneumonia in the last 14 days; she does not use oxygen on a daily basis; she had not had insulin daily; and she was not on dialysis. 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**

The LOC, page 6, provides that the Applicant must:

[H]ave 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

In the seven days prior to the NFLOC, Petitioner had not had physical therapy, occupational therapy or speech therapy. 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**

The LOC, page 6, provides a listing of behaviors recognized under Door 6: Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, Resists Care.

The LOC, page 8, provides that the Petitioner would qualify under Door 6 if the Petitioner had a score under the following two options:

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.

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

The Petitioner could qualify under Door 7 if there was evidence that [he/she] is currently being served in a nursing facility (and for at least one year) or by the MI Choice or PACE program, and required ongoing services to maintain her current functional status.

Petitioner resides in her own home. She is not being served by MI Choice Program, PACE program, or Medicaid reimbursed nursing facility; does not requires ongoing services to maintain current functional status, and other community, residential, or informal services are available to meet the applicant's needs. She is on the Care Management Waitlist.

Here, Petitioner has not established that she needs 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 NFLOC process is designed to be a snapshot of an individual's condition versus that person's need for Medicaid covered Nursing Facility services. When the NFLOC 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 NFLOC eligibility on [REDACTED]. The undersigned ALJ finds that the Petitioner 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 Petitioner did not require Medicaid reimbursed NF level of care as demonstrated by the NFLOC 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 Petitioner does not meet requirements that establish eligibility for a Medicaid Nursing Facility Level of Care.

IT IS, THEREFORE, ORDERED that:

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

LL ■



Landis Lain
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

DHHS -Dept Contact

[REDACTED]

Community Health Rep

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]