



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: October 27, 2016
MAHS Docket No.: 16-012363
Agency No.: [REDACTED]
Petitioner: [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, and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 25, 2016. Petitioner appeared and testified on his own behalf. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services. [REDACTED] a Long Term Care Program Policy Specialist with the Department; [REDACTED] the MDS Coordinator at [REDACTED]; and [REDACTED], a social worker at [REDACTED]; testified as witnesses for the Department.

ISSUE

Did Respondent properly determine that Petitioner does 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 a sixty-one-year old Medicaid beneficiary who has been admitted as a resident at [REDACTED], a nursing facility. (Exhibit A, page 10; Testimony of Ms. [REDACTED]).
2. On February 18, 2016, around the time of his admission, [REDACTED] staff conducted a Michigan Medicaid Nursing Facility Level of Care Determination ("LOCD") for Petitioner. (Exhibit A, pages 10-16).

3. In that LOCD, Petitioner was found to be eligible to receive Medicaid reimbursable services at the facility by passing through Door 3 of the LOCD evaluation tool due to a recent physician visits and order changes. (Exhibit A, pages 13-14).
4. On June 17, 2016, [REDACTED] staff conducted another LOCD for Petitioner. (Exhibit A, pages 17-23).
5. In that second LOCD, Petitioner was found to be ineligible for Medicaid nursing facility care based upon his failure to qualify via entry through one of the seven doors of that tool. (Exhibit A, pages 17-23).
6. [REDACTED] also provided Petitioner with written notice that the facility had determined that he no longer qualified for services. (Exhibit A, page 24).
7. On September 9, 2016, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed by Petitioner in this matter regarding that decision. (Exhibit A, pages 29-31).

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, April 1, 2016 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, April 1, 2016 version, Nursing Facility Coverages Chapter, pages 9-12. 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, April 1, 2016 version, Nursing Facility Coverages Chapter, pages 11-12.

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, April 1, 2016 version, Nursing Facility Coverages Chapter, page 11.

The June 17, 2016 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 above seven doors in the June 17, 2016 LOCD, and that he was therefore ineligible for a Medicaid reimbursable nursing facility level of care.

Given the LOCD and the testimony during the hearing, it is clear that the findings regarding the doors must be affirmed. It is undisputed that Petitioner is independent in all the tasks identified in Door 1; none of his conditions or behaviors meet the criteria for passing through Doors 2, 4 or 6; and the medical treatment Petitioner was receiving did not reach the levels required by Doors 3, 4, or 5. Additionally, with respect to Door 7, Respondent properly noted that Petitioner had not been a program participant for over a year and, consequently, did not qualify through that door.

In response, Petitioner testified that he only disputes the decision because he does not have a place to go and that he is awaiting placement through a nursing facility transition program. However, neither of those arguments is a basis for finding that Petitioner passed through any door of the LOCD and Respondent’s decision must be affirmed.

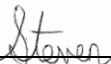
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department correctly determined that Petitioner does not require a Medicaid reimbursable Nursing Facility Level of Care.

IT IS, THEREFORE, ORDERED that:

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

SK/tm



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

DHHS Department Rep.

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