



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: [REDACTED]
MAHS Docket No.: 16-001285
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 and testified. [REDACTED] appeared as a witness on behalf of the Petitioner.

[REDACTED], Appeal Review Officer represented the Michigan Department of Health and Human Services. [REDACTED], Resident Assessment Coordinator with [REDACTED], and [REDACTED] RN Pacer Project Manager with MPRO appeared as witnesses.

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 a [REDACTED] year old female MA-AD Care Medicaid beneficiary whose date of birth is 10/15/51. (Exhibit A).
2. On [REDACTED] of [REDACTED] conducted an LOCD for Petitioner and determined her eligible under Door 1. (Exhibit A).

3. On [REDACTED] [REDACTED] conducted a subsequent LOCD based on a significant change in condition. Petitioner did not meet the LOCD criteria within the seven day look-back period from [REDACTED] for Doors 1, 2, 5, and 6. Petitioner did not meet the criteria for Doors 3 and 4 within the fourteen day look-back period. Door 7 was also not met. (Exhibit A.18-24).
4. On [REDACTED] [REDACTED] issued an adverse action notice informing Petitioner that she did not meet the Exception Review based on the NFLOC exception review criteria. (Exhibit A.26).
5. On [REDACTED] MAHS received a hearing request from Petitioner.

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 Health and Human Services (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 for 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.

The MPM, [Nursing Facility Eligibility and Admission Section] 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 MPM 5.1.D

Section 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 Health and Human Services:

APPEALS – 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. ... MPM, §5.2.A, NF Eligibility, page 14, July 1, 2015

An 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. The witness from the NF completed a LOCD 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 NF witness reviewers determined that Petitioner required Supervision with bed mobility, transfers, and toilet use. Petitioner was independent with eating. As such, Petitioner did not qualify through 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. "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."

The NF witness reviewers determined that Petitioner did not have a short-term memory problem, that her cognitive skills for daily decision making were independent, and that she was able to make herself understood. 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.

Here, the Respondent determined that Petitioner did not meet Door 3. Petitioner argued that she was seen at [REDACTED], admitted [REDACTED], and discharged [REDACTED] and as such, qualifies. Respondent indicated that a review of the NFLOC Guidelines under Door 3 specifically states: "Do not count visits or orders made while the applicant was hospitalized" and seen in ER. (Exhibit A.40). Thus, Petitioner does not have eligibility 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 NF witness reviewers determined that Petitioner did not meet the criteria listed for Door 4 at the time of the assessment.

Petitioner argued that she had a standing order for oxygen use, and did use the oxygen daily. The Respondent's witness indicated that Petitioner refused to allow the oxygen in her room, and did not use it on a regular basis, or as required by the criteria found in Door 4. Upon examination, Petitioner attempted to give dates and times, but her

testimony was inconsistent. Petitioner's testimony could not be considered credible. As such, under the evidence of record, Petitioner did not qualify for Door 4.

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 NF witness reviewers determined that Petitioner did not meet the criteria listed for Door 5 at the time of the assessment.

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 NF witness reviewers determined that Petitioner did not meet the criteria set forth above to qualify under Door 6 because she exhibited none of the listed behaviors.

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.

The NF witness reviewers determined that Petitioner did not qualify under Door 7 because, at the time of the LOCD, she did not require ongoing services to maintain current functional status and there were other community, residential, or informal services available to meet Petitioner's needs.

Based on the evidence presented the Department adequately demonstrated that the Petitioner did not meet LOCD eligibility on the review conducted on [REDACTED]. Petitioner had previously met the LOCD criteria through Door 1, but on [REDACTED] did not meet Door 1 or the other criteria for the remaining Doors.

The ALJ finds that Petitioner failed to prove, by a preponderance of the evidence that the Department erred in reviewing her medical/functional eligibility status. Petitioner did not require Medicaid reimbursed NF level of care on [REDACTED] as demonstrated by the application of the LOCD tool.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department correctly determined that Petitioner does not require a Medicaid Nursing Facility Level of Care.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



Janice Spodarek

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

JS/cg

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]