



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 24, 2016
MAHS Docket No.: 16-004287
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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-in-law appeared on behalf of the Petitioner. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Department of Health and Human Services (DHHS) Policy Specialist, [REDACTED], R.N., of the [REDACTED] ([REDACTED]), [REDACTED], LMSW, from [REDACTED] Medical Care Facility and [REDACTED], Unit Manager from [REDACTED] Medical Care Facility, appeared as witnesses for the Department.

Exhibits

Petitioner: None
Department: Exhibit A – Hearing Summary¹

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 Includes pages 33-48 that were received after the hearing was completed.

1. Petitioner is an [REDACTED] year-old Medicaid beneficiary, born [REDACTED]. (Exhibit A, p. 10; Testimony.)
2. On [REDACTED], the Petitioner was found to be eligible for Medicaid reimbursed services in a Medicaid-certified nursing facility after a Level of Care Determination (LOCD) found the Petitioner eligible under Door 1. (Exhibit A, pp. 10-17; Testimony.)
3. On [REDACTED], the Petitioner was reassessed under the NFLOCD guidelines after a significant change in condition. The LOCD assessment indicated the Petitioner did not meet the LOCD criteria within a 7 day look-back period for Doors 1, 2, 5 and 6 nor did the Petitioner meet the criteria for Doors 3 and 4 within the 14 day look-back period. The criteria required for Door 7 was also not met. (Exhibit A, pp. 18-25; Testimony.)
4. On [REDACTED], [REDACTED] Medical Care Facility contacted [REDACTED] and requested an exception review on behalf of the Petitioner. (Exhibit A, p. 26; Testimony.)
5. On or around [REDACTED], [REDACTED] conducted an exception review. (Exhibit A, pp. 26; Testimony.)
6. On [REDACTED], [REDACTED] sent the Petitioner an advance action notice indicating the Petitioner no longer qualified for NF level of services. (Exhibit A, pp. 27; Testimony.)
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Petitioner's request for hearing. (Exhibit A, pp. 29.)

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, MI Choice, 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, MI Choice, 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 (LOC) 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, (April 1, 2016, p 7).

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 1.

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 evidence presented indicates the Petitioner was independent with toileting and eating and required supervision with bed mobility and transfers. As such, Petitioner does not qualify through Door 1.

Door 2
Cognitive Performance

The LOC, pages 3 – 4, provides that to qualify under Door 2 a 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."

The evidence presented indicates the Petitioner had okay memory; was independent regarding her cognitive skills related to daily decision making and is able to make herself understood. As such, the Petitioner does not qualify through 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.

The evidence presented indicates the Petitioner had 1 physician visit and 0 physician order change within the prior 14 days. As such, the Petitioner does 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

The evidence presented indicates the Petitioner did not meet the criteria listed for Door 4 at the time of the assessment.

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

The evidence presented indicates the Petitioner did not receive any of the skilled therapies listed for Door 5 in the prior 7 days. As such, the Petitioner does not qualify under Door 5.

Door 6
Behavior

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

The evidence presented indicates the Petitioner did not exhibit any of the behaviors found in Door 6. As such, the Petitioner does not qualify under Door 6.

Door 7
Service Dependency

The Petitioner could qualify under Door 7 if there was evidence that 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.

Based upon the evidence presented, the Petitioner does not meet the requirements found under Door 7. As such, the Petitioner does not qualify under Door 7.

█'s witness testified that a review was conducted to determine if the Petitioner was eligible for an exception to the NFLOC criteria. The witness testified that based upon

the review, it was determined the Petitioner did not meet any exceptions for Frailty, Behaviors, or Treatments.

Consequently, the evidence presented by the Department adequately demonstrated that the Petitioner did not meet LOCD eligibility on the review conducted on [REDACTED] or the immediate review completed by [REDACTED] shortly thereafter.

As such, I find the Petitioner failed to prove, by a preponderance of the evidence that the Department erred in reviewing her medical/functional eligibility status. Petitioner does not require Medicaid reimbursed NF level of care as demonstrated by the application of the LOCD tool.

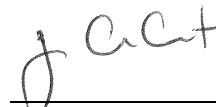
DECISION AND ORDER

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**.

CA [REDACTED]



Corey Arendt
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]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

Agency Representative

[REDACTED]