[redacted]
[redacted], MI [redacted]

Date Mailed: February 18, 2020
MOAHR Docket No.: 19-012707
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 January 28, 2020. Petitioner appeared and testified on his own behalf. Emily Piggott, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Alisyn Crawford, a Level of Care Policy Specialist for the Department, and Cindy Weller, an MDS Coordinator at Bay Shores Senior Care and Rehab Center, testified as witnesses for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-56. No other exhibits were submitted.

ISSUE

Did the Department properly determine that Petitioner did 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 [redacted] ([redacted]) year-old Medicaid beneficiary who has been admitted as a resident at Bay Shores Senior Care and Rehab Center, a nursing care facility. (Exhibit A, page 16; Testimony of MDS Coordinator).

2. On June 21, 2019, around the time of his admission, nursing facility staff conducted a Michigan Medicaid Nursing Facility Level of Care Determination ("LOCD") with respect to Petitioner. (Exhibit A, pages 16-23).

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. (Exhibit A, pages 16-19).

4. Petitioner passed through Door 1 based on his need for extensive assistance with bed mobility, transferring, and toilet use. (Exhibit A, pages 17-19).

5. Petitioner no longer receives such assistance. (Exhibit A, pages 25-26; Testimony of Petitioner).

6. On September 27, 2019, nursing facility staff conducted another LOCD with respect to Petitioner. (Exhibit A, pages 24-31).

7. In that 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 24-31).

8. The nursing facility then sent Petitioner written notice that it has been determined that he no longer qualifies for a Medicaid reimbursable Nursing Facility Level of Care. (Testimony of MDS Coordinator).

9. On December 10, 2019, the Michigan Office Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter with respect to the determination that he did not require a Medicaid reimbursable Nursing Facility Level of Care. (Exhibit A, page 32).

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 Waiver, and Program of All-Inclusive Care for the Elderly (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, 2019 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, 2019 version, Nursing Facility Coverages Chapter, pages 7-9. 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, 2019 version, Nursing Facility Level of Care Determination Chapter, page 5.

The LOCD consists of seven-service entry doors or domains. The doors are: Activities of Daily Living, Cognitive Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependency. *See* MPM, October 1, 2019 version, Nursing Facility Level of Care Determination Chapter, pages 9-10.

The September 27, 2019 LOCD was the basis for the action at issue in this case. 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, demonstrate service dependency, and meet all three criteria [participant for at least one consecutive year (no break in coverage); requires ongoing services to maintain current functional status; no other community, residential, or informal services are available to meet the applicant's needs] to qualify under Door 7.

Here, the Department and the facility determined that Petitioner did not pass through any of the above seven doors in the September 27, 2019 LOCD and that he was therefore ineligible for a Medicaid reimbursable nursing facility level of care.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet his burden of proof and the decision must therefore be affirmed.

The facts in this case are undisputed and they reflect that Petitioner did not pass through any of the seven doors of the LOCD. There is no evidence that, at the time of the LOCD in this case, Petitioner needed sufficient assistance with the specific tasks identified in Door 1. Moreover, nothing suggests that, during the relevant look-back periods, that Petitioner's medical conditions, or the effects of those conditions, met the criteria for passing through Doors 2, 4, or 6. There is also no evidence that any treatment Petitioner received met the criteria required by Doors 3, 4, 5 or 6. Finally, Petitioner's needs can be met outside of the facility and he therefore did not pass through Door 7.

Petitioner himself expressly testified during the hearing that he does not disagree with the facility's findings with respect to any of the doors and that he is working with the social work on arranging a new place to live, with it just being a matter of finding an appropriate place.

Accordingly, regardless of what actions still need to be taken to discharge Petitioner from the facility, the Department's decision that Petitioner did not require a Medicaid reimbursable Nursing Facility Level of Care 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 did not require a Medicaid reimbursable Nursing Facility Level of Care.

IT IS, THEREFORE, ORDERED that:

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

Steven Kibit

SK/sb

Steven Kibit
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
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DHHS -Dept Contact

Jennifer Cornell
400 S. Pine, 6th Floor
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