ISSUE

Did the Department properly determine that Petitioner does not require a Medicaid reimbursable Nursing Facility (NF) Level of Care (LOC)?

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 Medicaid beneficiary and current resident of The Villages of REDACTED. (Exhibit A, p 2; Testimony.)

2. On June 20, 2023, a Nursing Facility (NF) Level of Care Determination (LOCD) was completed online, which found Petitioner eligible to receive Medicaid reimbursed NF services through Door 7 — Service Dependency. (Exhibit A, pp 19-26; Testimony.)

3. On August 29, 2023 a new LOCD was completed due to a significant change in condition, which found Petitioner to be ineligible for NF services paid by Medicaid through any of the LOCD doors. (Exhibit A, pp 27-34; Testimony.)

---

4. On August 29, 2023, Petitioner and his guardian were advised of the Department's action via Advance Action Notice. (Exhibit A, p 39; Testimony)

5. On October 16, 2023, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 36-44)

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 (MDHHS) 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.

The Medicaid Provider Manual (MPM) articulates Medicaid policy in Michigan. With regard to nursing facility eligibility, the MPM provides, in pertinent part:

> **SECTION 1 — GENERAL INFORMATION**
>
> The Michigan Department of Health and Human Services (MDHHS) is required to assess all individuals seeking Medicaid-funded long-term services and supports (LTSS) to determine their functional need for those services. The determination is an essential component of eligibility for services in nursing facilities, the MI Choice Waiver Program, the Program of All-Inclusive Care for the Elderly (PACE), and the MI Health Link HCBS Waiver Program. Policies contained herein apply equally and consistently to each of these programs except as noted.
>
> Providers may access the LOCD online in the Community Health Automated Medicaid Processing System (CHAMPS) through the MILogin application. (Refer to the Directory Appendix for website information.) LOCD assessment data is entered and processed in CHAMPS.
>
> The LOCD is a "point in time" assessment; that is, it determines the individual's functional eligibility at the time of the assessment. MDHHS assumes that beneficiaries will maintain functional eligibility until they
>
> are determined otherwise through a reassessment or the LOCD's End Date. An LOCD is an in-person meeting between the qualified and licensed health professional and the individual seeking functional eligibility.

SECTION 2 - ELIGIBILITY REQUIREMENTS

Individuals seeking Medicaid-funded services from nursing facilities, MI Choice Waiver Program, PACE, or the MI Health Link HCBS Waiver Program must meet eligibility criteria. These criteria must be met before Medicaid payment is made for services rendered. Each beneficiary must be eligible for Medicaid services, demonstrate a need for nursing facility level of care, and meet all additional program-specific requirements. Medicaid reimbursement for covered services is only appropriate when both financial and functional eligibility have been established, and the individual meets other program-specific eligibility criteria.

2.1 BASIC MEDICAID ELIGIBILITY

Eligibility for Medicaid is determined by a variety of factors including, but not limited to, financial rules, age, health status, state residency and citizenship status. Providers are instructed to refer individuals who are not yet Medicaid eligible to a local MDHHS office or the MDHHS website for assistance. (Refer to the Directory Appendix for website information.)

2.2 NEED FOR NURSING FACILITY LEVEL OF CARE

An individual's need for nursing facility level of care is determined through the Nursing Facility Level of Care Determination (LOCD) assessment tool. The LOCD is a scientifically-validated and reliability-tested tool utilized during initial application and program eligibility redeterminations. This chapter describes the criteria and processes for administering the LOCD.

2.3 PROGRAM SPECIFIED ELIGIBILITY REQUIREMENTS

In addition to meeting Medicaid financial and functional eligibility requirements, individuals must also meet all program specific requirements before they can be determined eligible for that program. (Refer to the Nursing Facility Coverages, the MI Choice Waiver, the Program of All-Inclusive Care for the Elderly, and the MI Health Link chapters or to provider contracts for specific program requirements.) This chapter applies only to the LOCD process and is not intended to replace program-specific requirements.

The MPM also 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.

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 eight domains of need:

- Activities of Daily Living
- Cognitive Performance
- Physician Involvement
- Treatments and Conditions
- Skilled Rehabilitative Therapies
- Behavior,
- Service Dependency, and
- Frailty

If the provider determines through the LOCD that an individual is no longer eligible for nursing facility level of care paid for by Medicaid, the individual may request a secondary review.

6.4 LOCD SECONDARY REVIEW

The provider or the individual (or their legal representative) may request an LOCD Secondary Review. This review is completed by MDHHS or its designee to ensure full consideration of LOCD eligibility options. The Secondary Review is available only when an LOCD is entered in CHAMPS and results in a Door 0, indicating ineligibility. The review is a secondary review of documentation for all LOCD Doors, including Door 8.

Individual residents or their authorized representatives are allowed to appeal either a determination of financial ineligibility to the Department of Health and Human Services or medical/functional eligibility to the Department of Health and Human Services:

6.5 APPEAL RIGHTS AND MEDICAID FAIR HEARING

When an individual is determined ineligible for services and an appeal is requested, it is an adverse action for the individual. If the individual or their legal representative disagrees with the denial, they may request an administrative hearing.

The Michigan Office of Administrative Hearings and Rules (MOAHR), Administrative Hearings Pamphlet explains the process by which an administrative hearing and a preliminary conference are brought to completion. The pamphlet is available for review on the MDHHS website.

(Refer to the Directory Appendix for website information.) Both a provider representative and a MDHHS Long Term Care Policy Section representative must be present at the hearing.

When a beneficiary is determined to no longer be eligible for Medicaid-funded services and an appeal is requested, Medicaid will continue to pay for services if the beneficiary appeals within required program timeframes. If the beneficiary does not appeal the decision, the provider is eligible for Medicaid-reimbursement through the effective date of the advanced action notice, or the date in which the beneficiary stopped receiving services, whichever is first. When the beneficiary appeals the decision in compliance with MDHHS policy, MDHHS will reimburse the provider for services throughout the appeal process. If the beneficiary's appeal is denied, MDHHS will reimburse the provider for up to 30 days from the date of issuance of the hearing decision and order.

Medicaid Provider Manual
Nursing Facility Level of Care Determination Chapter
July 1, 2023, pp 1-14

An LOCD is required to be done 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 need 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. To be eligible under Door 8, the resident must meet the frailty criteria.

The Department presented testimony and documentary evidence that Petitioner did not meet any of the criteria for Doors 1 through 8. The witnesses 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 was independent with bed mobility, transfers, toilet use, and 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's short-term memory was okay, that his cognitive skills for daily decision making were modified independent, and that he was able to make himself 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.

Petitioner had **1** physician visit and 0 physician order changes within 14 days of the assessment. As such, Petitioner did not qualify 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 have any of the conditions listed in Door 4 and was not receiving any of the treatments listed in Door 4. Accordingly, Petitioner did not qualify under 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 was not currently receiving any skilled rehabilitation therapies at the time of the LOCD. Accordingly, Petitioner did not 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.

The NF witness reviewers determined that Petitioner did not have any delusions or hallucinations within seven days of the LOCD. Petitioner did not exhibit wandering, physically abusive behavior, socially inappropriate/disruptive behavior, or resist care within the seven days of the LOCD. Accordingly, Petitioner did not qualify under Door 6.

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 he 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 meet all the criteria under Door 7.

Petitioner did not request an immediate review, so Door 8 — Frailty, was not scored.

Petitioner's AHR testified that she does understand that Petitioner does not fit neatly into any of the first 6 doors, but she believes he touches in a lot of them. Petitioner's AHR indicated that Petitioner needs hands-on assistance with showering, he needs staff to shave him and put on his compression socks, as well as assistance to clean himself up after incontinence episodes. Petitioner's AHR testified that Petitioner's cognition is not perfect because he has a brain injury from being hit in the head with a baseball bat. Petitioner's AHR indicated that the BIMS test conducted by the NF does not really assess his abilities as far as judgment and insight, which Petitioner lacks. Petitioner's AHR noted that Petitioner does not understand why he must take medication, or take a shower, or put clothes on, and the staff has to explain these things to him in simple terms every day.

Petitioner's AHR testified that since the LOCD was conducted in August, Petitioner has had four more cardiology appointments and has a new diagnosis of cardiomyopathy as well as a blood clot in his leg. Petitioner's AHR indicated that Petitioner's glaucoma is also very unstable, and he is at risk of losing his left eye as the medications he is taking are not bringing down the pressure. Petitioner's AHR testified that Petitioner is somewhat resistant to care. Petitioner's AHR indicated that she believes Petitioner qualifies through Door 7 for service dependency as he has lived at the facility for almost seven years. Petitioner's AHR noted that she is afraid that if Petitioner were in a less restrictive environment, he would not maintain functioning and only has been able to maintain functioning due to the care he receives at the NF. Petitioner's AHR also indicated that she believes Petitioner would suffer transfer trauma if he had to move and he would rapidly decline both physically and emotionally. Petitioner's AHR testified that she has known Petitioner since he arrived at the NF and any time she talks to him about moving back into the community he becomes riddled with anxiety.

Based on the evidence presented the Department adequately demonstrated that the Petitioner did not meet LOCD eligibility on the review conducted on August 29, 2023. Petitioner had previously met the LOCD criteria through Door 7, but on August 29, 2023

Petitioner did not qualify through any Doors. This does not imply that Petitioner does not need any assistance, or that he does not have any medical problems, only that he was not eligible to receive ongoing services, paid for by Medicaid, through the NF at the time of the assessment. Clearly Petitioner will remain eligible for numerous Medicaid paid services when he returns to the community, be that in an Adult Foster Care (AFC) home or wherever he is discharged to. However, he did not qualify for NF services paid for by Medicaid at the time of the LOCD.

Further, while it is always possible that Petitioner's condition will worsen if he is removed from the NF, policy does not allow Petitioner to remain in the NF, paid for by Medicaid, in the interim. Petitioner's current needs can be met in a less restrictive environment in the community.

If Petitioner's AHR believes that his condition has deteriorated substantially since the August 29, 2023 LOCD, she can request that another LOCD be performed.

Transfer trauma must be considered by the NF prior to a change in nursing level of care or discharge, but it is not part of the LOCD. *(See MPM, Nursing Facilities Coverages Chapter, July 1, 2023, pp 62-63.)*

However, based on the information available on August 29, 2023, the ALJ finds that Petitioner failed to prove, by a preponderance of the evidence that the Department erred in reviewing his medical/functional eligibility status. Petitioner did not require Medicaid reimbursed NF level of care on August 29, 2023 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 did not require a Medicaid Nursing Facility Level of Care on August 29, 2023.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.