

## **ISSUE**

Did the Department properly determine that Petitioner no longer met the Nursing Facility (NF) Level of Care (LOC) criteria?

## **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On November 11, 2023, a Level of Care Determination (LOCD) was performed; and it was determined Petitioner qualified for Medicaid covered services qualifying through Door 1. (Exhibit A; Testimony.)

2. On January 2, 2024, a subsequent LOCD was conducted due to a significant change in condition; and it was determined Petitioner was no longer eligible for long term care services. (Exhibit A; Testimony.)
3. On January 3, 2024, Petitioner was provided with an Advance Action Notice, informing Petitioner of the results of the LOCD and the fact he no longer qualified for Medicaid reimbursed services in a Medicaid-certified nursing facility. (Exhibit A; Testimony.)
4. On March 21, 2024, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)

### **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.

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

#### **5.1 NURSING FACILITY ELIGIBILITY**

There are five components that determine beneficiary eligibility and 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) prior to or the day of admission to a nursing facility. (Refer to the Nursing Facility Level of Care Determination Chapter for additional information.)
- Computer-generated Freedom of Choice (FOC) form signed and dated by the beneficiary or the beneficiary's representative as

described in the Nursing Facility Level of Care Determination Chapter.

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.<sup>1</sup>

The LOCD is a "point in time" assessment; that is, it determines the individual's functional eligibility at the time of the assessment.<sup>2</sup> The LOCD must be conducted face-to-face by a qualified and licensed health professional.<sup>3</sup>

The Michigan Medicaid NF LOC Determination's medical/functional criteria include seven domains of need:

- Activities of Daily Living
- Cognitive Performance
- Physician Involvement
- Treatments and Conditions
- Skilled Rehabilitative Therapies
- Behavior, and
- Service Dependency<sup>4</sup>

When a qualified and licensed health professional determines that an individual does not qualify for NF LOC services based on the LOCD, the provider must issue an adverse action notice. For beneficiaries who had previously met LOCD criteria but based on a significant change in condition no longer meet the LOCD criteria, an Advance Action notice must be provided.<sup>5</sup>

The provider or the beneficiary may request an LOCD secondary review (MPRO). The review is completed by MDHHS or its designee (MPRO) to ensure full consideration of LOCD eligibility options.<sup>6</sup>

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

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<sup>1</sup> Medicaid Provider Manual (MPM), Nursing Facility Coverages Chapter, July 1, 2023, pp 7, 17.

<sup>2</sup> MPM, Nursing Facility Level of Care Determination Chapter, October 1, 2019, p 1.

<sup>3</sup> *Id* at 3.

<sup>4</sup> *Id* at 9.

<sup>5</sup> *Id* at 13.

<sup>6</sup> *Ibid*.

LOCD and determined the Petitioner was not eligible for continued Medicaid covered care in their skilled nursing facility. There is no evidence of the Petitioner ever requesting an MPRO review.

**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 eating and required only supervision with bed mobility, transfers, and toilet use. 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 Petitioner's cognitive skills for daily decision making were independent, and that Petitioner 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 0 physician visits 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 listed conditions or treatments found under Door 4 within 14 days of the assessment. As such, 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 receiving any skilled rehabilitation therapies at the time of the assessment. Petitioner argued he would have continued receiving therapy but that it was the facility that determined it should stop. In response, the facility indicated therapy had ceased as it was determined Petitioner had maximized his recovery potential and was not stabilized. As such, 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 exhibit any of the listed behaviors under Door 6 within 7 days of the assessment. As such, 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 testified and indicated that following the LOCD, it was determined he would need to undergo additional surgery that is expected to be performed in the near future. Petitioner, however, did not present any direct evidence to dispute the findings of LOCD during the applicable look back periods.

Based on the evidence presented, the Department adequately demonstrated that the Petitioner did not meet LOCD eligibility on the review conducted. 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 through the NF at the time of the assessment.

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 as demonstrated by the application of the LOCD tool. If Petitioner, however, undergoes the surgery, upon return to the facility, he should request a new LOCD based on a significant change in condition.

### **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**.