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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR



Date Mailed: November 19, 2024
MOAHR Docket No.: 24-009412
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the Michigan Office of Administrative Hearings and Rules (MOAHR) and the undersigned Administrative Law Judge (ALJ) 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 November 12, 2024.

Petitioner appeared and testified on his own behalf. Chelsey Rutan, Petitioner's Case Manager at Pines Behavioral Health; and [REDACTED] Petitioner's caregiver, also testified as witnesses for Petitioner.

Leigha Klaver, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Ian Lowers, a Departmental Analyst with the Department; Kayla Perry, a registered nurse at the Region 3B Area Agency on Aging (AAA); and Michelle Scholten, a Long-Term Care (LTC) Reviewer at iMPROve Health; testified as witnesses for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-74. No other proposed exhibits were submitted.

ISSUE

Did the Department properly deny Petitioner's request for services through the MI Choice Waiver Program?

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 has applied for services through the Region 3 AAA pursuant to the MI Choice Waiver Program. (Testimony of Analyst).
2. On July 24, 2024, Region 3B AAA staff conducted a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) with respect to Petitioner. (Exhibit A, pages 24-30, 72; Testimony of RN).
3. In the LOCD, Petitioner was found to be ineligible for a Medicaid reimbursable nursing facility level of care based upon his failure to qualify via entry through any of the doors of that tool. (Exhibit A, pages 24-30; Testimony of RN).
4. The Region 3B AAA sent Petitioner written notice that his request for services had been denied based on the LOCD. (Testimony of RN).
5. Petitioner then requested a secondary review with iMPROve Health, the Department's contracted reviewer. (Testimony of LTC Reviewer).
6. On July 25, 2024, an RN with iMPROve Health reviewed documentation submitted from the provider; and she determined that Petitioner did not pass through any of the doors of LOCD. (Exhibit A, pages 31-41, 68-69; Testimony of LTC Reviewer).
7. On July 26, 2024, iMPROve Health sent Petitioner an Adequate Action Notice stating in part that "it has been determined that you do not qualify for nursing facility-level services based on the Michigan Medical Nursing Facility Level of Care Determination (LOCD)". (Exhibit A, page 70).
8. On August 26, 2024, MOAHR received the request for hearing filed by Petitioner in this matter with respect to that decision. (Exhibit A, pages 42-43).

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.

The Medicaid Provider Manual (MPM) describes the policy for admission and continued eligibility for the MI Choice Waiver Program:

SECTION 2 – ELIGIBILITY

The MI Choice program is available to persons who are either elderly (age 65 or older) or adults with disabilities age 18 or older and meet the following eligibility criteria:

- An applicant must establish their financial eligibility for Medicaid services as described in the Financial Eligibility subsection of this chapter.
- Must be categorically eligible for Medicaid as aged or disabled.
- The applicant must meet functional eligibility requirements through the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- It must be established that the applicant requires at least two waiver services, one of which must be supports coordination, and that the service needs of the applicant cannot be fully met by existing State Plan or other services.

All criteria must be met to establish eligibility for the MI Choice program. MI Choice participants must continue to meet these eligibility requirements on an ongoing basis to remain enrolled in the program.

* * *

2.2 FUNCTIONAL ELIGIBILITY

The MI Choice waiver agency must verify an applicant's functional eligibility for program enrollment using the LOCD application in CHAMPS. Waiver agencies must conduct an LOCD in person with an applicant and submit that information in the LOCD application in CHAMPS, or the agency may adopt an existing LOCD conducted by another provider. The information submitted is put through an algorithm within the application to determine whether the applicant meets LOCD criteria. Only the LOCD application in CHAMPS can determine functional eligibility for the nursing

facility level of care. Additional information can be found in the Nursing Facility Level of Care Determination Chapter and is applicable to MI Choice applicants and participants.

*MPM, July 1, 2024, version
MI Choice Chapter, pages 1-2*

Moreover, regarding the required LOCD referenced in the above policy, the MPM also states in 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) that require level of care eligibility to determine their functional need for those services. The determination is an essential component of eligibility for services provided in nursing facilities, the MI Choice Waiver Program, the Program of All-Inclusive Care for the Elderly (PACE), and the MI Health Link Home and Community Based Services (HCBS) Waiver Program. Policies contained herein apply equally and consistently to each of these programs except as noted.

MDHHS uses a standard assessment and process for all programs and services that require an individual meet the nursing facility level of care. Programs may not use any other assessment in place of the Level of Care Determination (LOCD) tool for this determination. The LOCD assures a consistent and reliable process for determining that individuals meet the functional eligibility requirements.

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 3 – NURSING FACILITY LEVEL OF CARE DETERMINATION PROCESS

3.1 LOCD ASSESSMENT REQUIREMENT FOR REIMBURSEMENT

The LOCD must be conducted prior to or on the day of an individual's admission to a nursing facility or enrollment in MI Choice Waiver Program, PACE, or MI Health Link HCBS Waiver Program to ensure reimbursement for a Medicaid eligible beneficiary. The LOCD must be conducted in person by a qualified and licensed health professional. The qualified and licensed health professional conducting the LOCD or a designated employee of the organization must enter the assessment findings online in the CHAMPS system. Except where otherwise noted, only LOCDs entered in CHAMPS are considered valid for establishing functional eligibility.

The LOCD is considered payable when all the following conditions are met:

- the beneficiary meets LOCD criteria;
- the LOCD is entered online in CHAMPS;
- the LOCD is active on the date of service (meaning the date of service is on or after the LOCD Start Date and before the LOCD End Date); and
- the beneficiary is receiving LTSS and meets all program-specific eligibility criteria.

3.2 PERSONS AUTHORIZED TO CONDUCT THE LOCD

A qualified and licensed health professional must be a physician, registered nurse, licensed practical nurse, licensed social worker (Limited License Bachelor of Social Work, Limited License Master Social Worker, Licensed Bachelor Social Worker, or Licensed Master Social Worker), physician's assistant, nurse practitioner, licensed psychologist, physical therapist, respiratory therapist,

occupational therapist or speech therapist. Once the LOCD is completed by a qualified and licensed health professional, a clinical or non-clinical staff person may enter the LOCD information in CHAMPS. When the LOCD data are entered, CHAMPS applies the MDHHS algorithm to determine eligibility.

3.3 INITIAL LOCD ASSESSMENT

The LOCD must be conducted in person by a qualified and licensed health professional (as defined in the Persons Authorized to Conduct the LOCD subsection) before the provider is eligible for Medicaid reimbursement for services rendered to the beneficiary. The LOCD must be conducted prior to or on the day of admission or enrollment. The LOCD assessment findings for all LOCDs conducted, including Door 0 (zero), which indicate the individual does not meet LOCD criteria must be entered online in CHAMPS. (LOCD Doors are described in the Nursing Facility Level of Care Determination Criteria section.)

* * *

3.7 ONGOING FUNCTIONAL ELIGIBILITY

Medicaid LTSS providers are required to ensure the individual continues to meet eligibility requirements on an ongoing basis. The functional eligibility that is assessed by the LOCD is one of the eligibility requirements. Therefore, Medicaid LTSS providers must ensure that individuals meet LOCD criteria on an ongoing basis. The LTSS provider is responsible for conducting a new LOCD if there is a significant change in the beneficiary's condition. When a provider possesses information that a beneficiary may no longer meet eligibility, the provider must conduct an in person reassessment. Such information may come in the form of progress notes, routine assessments, staff observations, or any other documentation that might call into question the continued functional eligibility of the beneficiary.

* * *

3.8.D. NEED TO CONDUCT A NEW LOCD

For the Doors that the passive determination is unable to assess, the provider must conduct an in-person

LOCD prior to the current LOCD End Date. The provider must conduct a new LOCD prior to the End Date and enter it in CHAMPS within 14 days of the conducted date.

When the passive redetermination applies but the process cannot confirm eligibility based upon MDS or iHC assessment data, CHAMPS will create a LOCD Door 87 with an End Date 45 days from the date that record is loaded in CHAMPS, or until the current End Date, whichever is earlier. When the passive redetermination process continuously confirms that the beneficiary meets LOCD criteria, it is possible that the beneficiary will not require another in-person LOCD because the passive redetermination process confirms LOCD eligibility and creates a new LOCD with a new 365-day End Date. In addition, providers must conduct an in-person LOCD when there is a significant change in the beneficiary's condition, as defined by the program.

SECTION 4 – NURSING FACILITY LEVEL OF CARE DETERMINATION CRITERIA

The Michigan Nursing Facility Level of Care Determination criteria includes seven domains of need, called Doors. The Doors include: (1) Activities of Daily Living; (2) Cognitive Performance; (3) Physician Involvement; (4) Treatments and Conditions; (5) Skilled Rehabilitation Therapies; (6) Behaviors; and (7) Service Dependency. The Doors and the assessment items are listed below. Guidance on administering the LOCD, including definitions and methods, is provided in the Michigan Medicaid Nursing Facility Level of Care Determination Field Definition Guidelines.

The LOCD should be an accurate reflection of an individual's current functional status. This information is gathered in an in-person meeting by speaking to the individual and those who know the individual well, observing the individual's activities, and reviewing an individual's medical documentation. Refer to the Michigan Medicaid Nursing Facility Level of Care Determination Field Definition Guidelines on the MDHHS website for more information. (Refer to the Directory Appendix for website information.)

4.1 DOOR 1: ACTIVITIES OF DAILY LIVING

Door 1 assesses four ADLs: (1) Bed Mobility; (2) Transfers; (3) Toilet Use; and (4) Eating.

4.2 DOOR 2: COGNITIVE PERFORMANCE

Door 2 assesses short-term memory, cognitive skills for daily decision-making and making self-understood.

4.3 DOOR 3: PHYSICIAN INVOLVEMENT

Door 3 assesses the frequency of physician visits and physician order changes.

4.4 DOOR 4: TREATMENTS AND CONDITIONS

Door 4 assesses a set of nine treatments and conditions that may be a predictor of potential frailty or increased health risk. The treatments and conditions include: Stage 3-4 Pressure Sores; Intravenous or Parenteral Feeding; 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 the Last 14 Days; and Peritoneal or Hemodialysis.

4.5 DOOR 5: SKILLED REHABILITATION THERAPIES

Door 5 assesses the presence of rehabilitation interventions, including physical therapy, occupational therapy, and speech therapy.

4.6 DOOR 6: BEHAVIOR

Door 6 assesses behavioral challenges. It includes five behavioral symptoms: wandering, verbal abuse, physical abuse, socially inappropriate or disruptive behavior, and resistance to care. Door 6 also assesses for the presence of delusions and hallucinations.

4.7 DOOR 7: SERVICE DEPENDENCY

Door 7 applies to beneficiaries currently receiving other services and supports in nursing facilities, MI Choice, PACE, or the MI Health Link HCBS Waiver program. It assesses the

beneficiary's dependence on services to maintain the current level of functioning and whether there are options for maintaining the level of functioning with services and supports available in the community.

4.8 DOOR 8: FRAILITY

MDHHS or its designee determined that the beneficiary is eligible for Medicaid LTSS services based upon the Frailty Criteria. Individuals who exhibit certain behaviors and treatment characteristics that indicate frailty may be admitted or enrolled to LTSS programs requiring an LOCD. The individual needs to trigger one element of this criteria to be considered for Frailty. Refer to the Michigan Medicaid Nursing Facility Level of Care Determination Exception Process on the MDHHS website for more information. (Refer to the Directory Appendix for website information.) For the MI Health Link program, the Frailty Criteria are applied by the Integrated Care Organization.

4.9 DOOR 0: INELIGIBLE

The LOCD was conducted and the beneficiary did not meet the criteria for any of the doors. The beneficiary is not eligible for Medicaid LTSS services at this time. (Refer to the Individual Does Not Meet LOCD Criteria, Action Notices, and Appeal Rights section for additional information.)

*MPM, January 1, 2024, version
Nursing Facility LOCD Chapter
Pages 1, 3-10*

A LOCD is therefore mandated for all Medicaid-reimbursed enrollments in MI Choice. Moreover, even after admission, an enrollee must also continue to meet the outlined criteria in the LOCD on an ongoing basis.

Moreover, regarding a secondary review following a LOCD, the MPM further provides in part:

SECTION 6 – INDIVIDUAL DOES NOT MEET LOCD CRITERIA, ACTION NOTICES, AND APPEAL RIGHTS

If an individual does not meet LOCD criteria for Doors 1 through 7, the provider must provide notice to the individual. The individual may request a Secondary Review from

MDHHS or its third-party designee and request a Medicaid Fair Hearing before an Administrative Law Judge.

* * *

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.

The LOCD Secondary Review Process is conducted as follows:

- A Secondary Review may be initiated by the provider, individual or their legal representative after the qualified and licensed health professional issues an adverse action notice based on a finding of ineligibility. The provider, individual or their legal representative may request a Secondary Review from MDHHS or its designee. The individual will have three business days to make a request following written notice of the adverse action.
- In the action notice, the provider who conducted the ineligible LOCD must provide the individual with information on how to timely request a Secondary Review following an ineligible LOCD.
- Following the individual's request for review, the MDHHS designee will contact the provider who conducted the LOCD and inform them to upload documentation in CHAMPS for review.
- The provider who conducted the LOCD will upload the relevant documentation in CHAMPS within one business day of being notified to do so.
- The MDHHS designee will review the documentation, obtain information from the individual or their legal representative, if requested, and notify the provider

and the individual or their legal representative of the decision.

- If the Secondary Review determines that the individual is eligible, MDHHS or its designee will contact the provider and the individual or their legal representative.
- If the Secondary Review determines that the individual is ineligible, MDHHS or its designee will issue an adverse action notice and inform the individual of their appeal rights.
- MDHHS or its designee will enter the appropriate LOCD in CHAMPS.

*MPN, July 1, 2024, version
Nursing Facility LOCD Chapter
Pages 13-14*

The July 24, 2024, LOCD and July 25, 2024, secondary review were the basis for the action at issue in this case. To be found eligible for the Mi Choice Waiver Program, the Petitioner must have met the requirements of at least one door:

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

* * *

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."

* * *

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.

* * *

Scoring Door 4: The applicant must score "yes" in at least one of the nine categories and have a continuing need to qualify under Door 4.

* * *

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.

* * *

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.

* * *

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.

Exhibit A, pages 49, 53-56, 58-59

Here, acting for the Department, the Region 3B AAA determined that Petitioner did not pass through any of the above doors in the July 24, 2024, LOCD, and that he was, therefore, ineligible for the MI Choice Waiver. Moreover, after Petitioner requested a secondary review, the Department also denied Petitioner's request for enrollment.

In appealing those decisions, Petitioner bears the burden of proving by a preponderance of 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 decisions were made.

Given the available information and applicable policies in this case, Petitioner has failed to meet his burden of proof; and the decisions must therefore be affirmed as the facts in this case reflect that Petitioner did not pass through any of the doors of the LOCD.

For example, while Petitioner may require assistance with tasks such as showering, dressing, grooming, and transportation as claimed by Petitioner and his caregiver, and unchallenged by the Department, it is undisputed that Petitioner does not require sufficient assistance in the specific tasks identified in Door 1 to pass through that door. With respect to those specific tasks, Petitioner's caregiver only identified a need for limited assistance with toileting; but even if the testimony was true, that is not enough to pass through Door 1.

Similarly, nothing demonstrates 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. Petitioner, at most, identified an issue with his short-term memory; but even if that testimony was true, that is not enough to pass through Door 2.

Moreover, there is also no evidence that any treatment Petitioner received met the criteria required by Doors 3, 4, 5, or 6.

Additionally, with respect to Door 7, Petitioner is not a current resident in a Medicaid-certified nursing facility or current participant in Mi Choice, PACE or MI Health Link; and he, therefore, does not meet all the requirements to pass through Door 7.

Finally, regarding the requested secondary review and Door 8, the LTC Reviewer credibly explained her findings and why Petitioner did not meet the frailty criteria, with Petitioner not disputing that testimony or demonstrating that he met the applicable criteria.

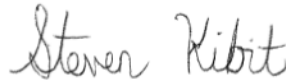
To the extent Petitioner has additional or updated information to provide in support of the request for MI Choice services, then he can always request such services again in the future along with that information. With respect to the decision at issue in this case, however, the Department's decision must be affirmed given the available information and applicable policies.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's request for services through the Mi Choice Waiver Program.

IT IS, THEREFORE, ORDERED that:

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



Steven Kibit
Administrative Law Judge

SK/pe

NOTICE OF APPEAL: Petitioner 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

Via Electronic Mail:

Agency Representative

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Via First Class Mail:

Petitioner

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