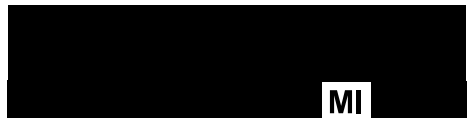




GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR



Date Mailed: November 19, 2024
MOAHR Docket No.: 24-010607
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

On September 23, 2024, Petitioner [REDACTED] requested a hearing to dispute Medicaid services. As a result, a hearing was scheduled to be held on November 13, 2024, pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; and Mich Admin Code, R 792.11002.

The parties appeared for the scheduled hearing. Attorney Marc Deldin appeared and represented Petitioner. Petitioner appeared with his attorney. Petitioner had three witnesses appear: [REDACTED] and Registered Nurse (RN) Timothy Evangelista. Respondent Michigan Department of Health and Human Services (Department) had Appeals Review Officer Florence Scott-Emuakpor appear as its representative. Respondent had four witnesses appear: Departmental Analyst Ian Lowers, RN Derek Porter, Social Worker Fatima Wright, and RN Michelle Scholten.

Sworn testimony was taken from both parties. The following exhibits were admitted into evidence:

- | | |
|-----------|---|
| Exhibit A | Respondent's hearing summary and supporting documents |
| Exhibit B | Respondent's secondary review documentation |
| Exhibit 1 | Petitioner's independent examination report |
| Exhibit 2 | Petitioner's Level of Care Determination |
| Exhibit 3 | Petitioner's medical records |

ISSUE

Did Regency at St. Clair Shores properly determine that Petitioner no longer meets the 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 male born on [REDACTED] 1949.
2. Petitioner was admitted to Regency at St. Clair Shores (Regency) in [REDACTED] and Petitioner has remained there ever since.
3. On May 9, 2024, Regency completed a nursing facility level of care determination (LOCD), and Regency determined that Petitioner met the LOCD medical/functional criteria for nursing facility level of care by scoring in Door 8. RN Alyson Burtle completed the LOCD.
4. On June 26, 2024, Regency completed a nursing facility LOCD, and Regency determined that Petitioner did not meet the LOCD medical/functional criteria for nursing facility level of care. RN Alyson Burtle completed the LOCD. The LOCD determination made the following pertinent findings:
 - a. Door 1: independent in the performance of activities of daily living.
 - b. Door 2: memory okay; cognitive skills for daily decision-making considered modified independent; able to make himself understood clearly and without difficulty.
 - c. Door 3: two physician visits within the past 14 days; no physician orders within the past 14 days.
 - d. Door 4: no complex care or treatments within the past 14 days.
 - e. Door 5: no rehabilitation therapy within the past 14 days.
 - f. Door 6: no challenging behaviors within the past 14 days.
 - g. Door 7: no known service dependency; independent living apartment appropriate per provider; only needs meal, laundry, and medication services.
 - h. Door 8: does not meet medical frailty requirements; able to perform activities of daily living; no shortness of breath; intermittent generalized weakness; frequent/intermittent pain – does not limit ability to perform activities of daily living; no history of falling; no ambulatory aid; well-nourished; and low risk of complications and/or morbidity or mortality.

5. On June 27, 2024, Regency issued an advance action notice to Petitioner to notify him that he no longer met the functional eligibility requirement for Medicaid long-term care services based on the LOCD conducted on June 26, 2024.
6. Petitioner requested a secondary review, and a secondary review was completed. The secondary review upheld Regency's determination that Petitioner no longer met the functional eligibility requirement for Medicaid long-term care services based on the LOCD conducted on June 26, 2024.
7. Petitioner requested a hearing to dispute Regency's determination.
8. On October 18, 2024, Regency completed another LOCD, and Regency determined that Petitioner did not meet the LOCD medical/functional criteria for nursing facility level of care. RN Derek Porter completed the LOCD in person.
9. Petitioner requested a secondary review, and a secondary review was completed on November 12, 2024. RN Michelle Scholten completed the secondary review. The secondary review upheld Regency's determination that Petitioner no longer met the functional eligibility requirement for Medicaid long-term care services based on the LOCD conducted on October 18, 2024. The secondary review made the following pertinent findings:
 - a. Door 1: independent in the performance of activities of daily living.
 - b. Door 2: brief interview for memory status (BIMS) score 15; understood and makes needs known per last minimum data set (MDS); doctor notes indicate alert and oriented.
 - c. Door 3: two physician visits within the past 14 days, and one physician order within the past 14 days.
 - d. Door 4: no complex treatments or conditions within the past 14 days.
 - e. Door 5: no rehabilitation therapy within the past 14 days.
 - f. Door 6: no behavior concerns; no documented hallucinations or delusions within the past 14 days.
 - g. Door 7: does not meet service dependency requirements.
 - h. Door 8: interviewed social worker who stated that staff do not do anything for Petitioner. Petitioner showers himself, dresses himself, and makes his own decisions. MDS and progress notes confirm this. Petitioner is willing to go to an assisted living facility, but his family does not want him to. Petitioner does not use a physical assistive device; Petitioner moves about freely. MDS states the same. MDS nurse also states that Petitioner no

longer needs blood sugar checks or daily insulin because he is on Ozempic. Petitioner does not want to learn to administer his own Ozempic shots, but staff feel he could be taught how. The social worker is seeking an assisted living facility to ensure Petitioner's needs are met. Petitioner complains of pain rating it 8/10 at times. Petitioner's pain is controlled, and it does not appear to slow him down per the MDS and charge nurse. Documentation in physician progress notes also confirm that Petitioner's pain is stable and controlled. Spoke with charge nurse, and charge nurse advised that Petitioner is completely independent. Charge nurse noted that Petitioner is alert and able to make his own decisions. Petitioner sees a podiatrist weekly and uses EZ transportation. Petitioner sees a podiatrist because he had his left big toenail removed. Petitioner's labs are stable. Petitioner has no documented falls or ER visits. Petitioner had one belligerent episode with the administrator in July, but nothing since then. Petitioner expressed that he is willing and able to leave the nursing facility. Petitioner advised his family wants him to stay in a nursing facility because they believe that he will not take his medications correctly or on time if he is not in a nursing facility. Petitioner asserted that he felt like he could take care of his personal needs without help.

10. Petitioner had an independent examination performed by RN Timothy Evangelista. RN Timothy Evangelista met with Petitioner on November 8, 2024, and November 11, 2024. RN Timothy Evangelista obtained and reviewed Petitioner's medical records. RN Timothy Evangelista completed an independent LOCD, and he determined that Petitioner met the LOCD medical/functional criteria for nursing facility level of care by scoring in Door 7. RN Timothy Evangelista determined that Petitioner met the requirements for Door 7 because: (i) Petitioner had been a resident of a nursing facility for more than a year; (ii) Petitioner requires ongoing services to maintain his current functional status; and (iii) there are no other services available that would meet Petitioner's needs. RN Timothy Evangelista determined that Petitioner requires ongoing services to maintain his current functional status because the facility dispenses medications to Petitioner for pain and depression that keeps Petitioner at a level of functionality and independence. RN Timothy Evangelista also determined that Petitioner requires ongoing services to maintain his current functional status because he requires prompting and encouragement to maintain his hygiene.

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 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 (Department) is required to assess all individuals seeking Medicaid-funded long-term care services and supports

that require level of care eligibility to determine their functional need for those services. *MDHHS Medicaid Provider Manual* (October 1, 2024), Nursing Facility Level of Care Determination Chapter, Section 1. The Department uses a standard assessment and process for all programs and services that require an individual to meet the nursing facility level of care. *Id.* Programs may not use any other assessment in place of the Level of Care Determination (LOCD) tool for this determination. *Id.* The LOCD assures a consistent and reliable process for determining that individuals meet the functional eligibility requirements. *Id.* The LOCD is a point-in-time assessment – it determines an individual’s functional eligibility at the time of the assessment. *Id.* The Department determines that an individual maintains functional eligibility until the individual is determined otherwise through a reassessment or the LOCD’s end date. *Id.*

In this case, the Department determined that Petitioner met the nursing facility level of care through an LOCD. Subsequently, Petitioner’s provider, Regency, completed a reassessment and determined that Petitioner’s condition no longer met the nursing facility level of care. The issue is whether Regency at St. Clair Shores properly determined that Petitioner no longer met the nursing facility level of care.

Once an individual is determined to meet the nursing facility level of care through an LOCD, the individual’s long-term care services and supports provider must ensure that the individual continues to meet the nursing facility level of care on an ongoing basis. *Id.* at Section 3.7. The provider is responsible for conducting a new LOCD if there is a significant change in a beneficiary’s condition. *Id.* When a provider possesses information that a beneficiary may no longer meet eligibility, the provider must conduct an in-person reassessment. *Id.*

The LOCD criteria includes seven domains of need called Doors. *Id.* at Section 4. 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. *Id.* Additionally, there is an eighth Door for Frailty. An individual must meet the criteria for at least one of the Doors to meet the nursing facility level of care. The LOCD should be an accurate reflection of an individual’s current functional status. *Id.* 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. *Id.*

Regency reassessed Petitioner’s nursing facility level of care by completing LOCD’s on June 26, 2024, and October 18, 2024. Regency determined through both LOCD’s that Petitioner no longer met the nursing facility level of care. Petitioner is disputing Regency’s determination. Petitioner asserted that Regency did not complete the LOCD’s properly because Regency did not complete them in person as required.

Petitioner did not present sufficient evidence to establish that Regency did not complete the LOCD’s properly because it did not complete them in person as required. Petitioner pointed out that the LOCD form that Regency used for the June 26, 2024, LOCD stated, “LOCD Method: Desk Review.” This statement does seem to indicate to a reasonable

person that the LOCD was completed by some sort of review of records rather than in person as required. However, RN Derek Porter testified that he completed Petitioner's most recent LOCD on October 18, 2024, and he did it in person. Thus, even if the June 26, 2024, LOCD was not completed in person as required, this error would have been harmless because Regency completed a subsequent LOCD in person in which it made the same determination.

Petitioner also asserted that Regency did not complete the LOCD's properly because Regency found Petitioner did not meet the criteria for Door 7 when Regency should have found that Petitioner met the criteria for Door 7. There are three criteria that must be met for Door 7. *Michigan Medicaid Nursing Facility Level of Care Determination Field Definition Guidelines* (September 2015), p. 16. The criteria are: (1) participant for at least one consecutive year; (2) requires ongoing services to maintain current functional status; and (3) no other community, residential or informal services are available to meet the applicant's needs. *Id.* It is undisputed that Petitioner met the first criteria for Door 7. However, Petitioner and Regency disagree about whether Petitioner met the second and third criteria.

RN Timothy Evangelista completed an independent LOCD for Petitioner, and he determined that Petitioner met the criteria for Door 7. RN Timothy Evangelista testified that he determined that Petitioner met the criteria for Door 7 because Petitioner requires ongoing services to maintain his current functional status; specifically, the facility dispenses medications to Petitioner for pain and depression that keeps Petitioner at a level of functionality and independence. RN Timothy Evangelista also testified that he determined that Petitioner requires ongoing services to maintain his current functional status because Petitioner requires prompting and encouragement to maintain his hygiene.

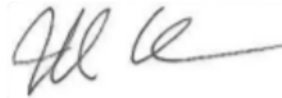
Petitioner is correct that Petitioner requires ongoing services to maintain his current functional status. Petitioner asserts that he requires ongoing services to maintain his current functional status because he requires help with his medications and his personal hygiene. This is consistent with Regency's LOCD that was completed on June 26, 2024. However, Petitioner did not present sufficient evidence to establish that Petitioner could not obtain help with those activities outside of a long-term care facility. It is more likely than not that Petitioner could obtain help with those activities from an assisted living facility, a home care worker, or another similar service provider. Thus, even though Petitioner requires ongoing services to maintain his current functional status, Petitioner still does not meet the criteria for Door 7 because Petitioner does not meet the third criteria.

Petitioner bears the burden to prove that Regency did not properly determine that Petitioner no longer meets the nursing facility level of care, and Petitioner has not met his burden. Petitioner did not present sufficient evidence to establish that Regency did not act in accordance with the Michigan Medicaid Provider Manual or any other applicable policy, rule, or law. Accordingly, Regency's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Regency at St. Clair Shores properly determined that Petitioner no longer meets the nursing facility level of care.

IT IS ORDERED that the decision is **AFFIRMED**.



Jeffrey Kemm
Administrative Law Judge

JK/pe

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

Via Electronic Mail:

Agency Representative

MDHHS
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Via First Class Mail:

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