

GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI  
[REDACTED]

Date Mailed: June 24, 2020  
MOAHR Docket No.: 20-000982  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Corey Arendt**

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Petitioner's request for a hearing.

After due notice, a hearing was held on May 12, 2020. Petitioner appeared on his own behalf.

Allison Pool, Appeals Review Officer, appeared on behalf of Respondent, Department of Health and Human Services (MDHHS or Department). Alisyn Crawford, Level of Care Determination (LOCD) Policy Specialist; Clarissa Bayer, LPN, Resident Coordinator for Wellspring Lutheran; Christi Turner, R.N. Director of Nursing for Wellspring Lutheran; and Stephanie Turner LBSW Social Worker for Wellspring Lutheran, appeared as witnesses for the Department. Tammi Lynch, Long-Term Care Ombudsman, observed the hearing.

Exhibits:

Petitioner                    None

Department                    A – Hearing Summary

**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 a Medicaid beneficiary, born [REDACTED]. (Exhibit A, p 16.)

2. On or around August 24, 2018, Petitioner was admitted to Regency at Waterford through Door 1. (Exhibit A, p 16; Testimony.)
3. On December 16, 2019, Regency at Waterford conducted a subsequent LOCD for Petitioner based on a significant change in condition. The Petitioner was found to be ineligible to receive Medicaid reimbursed NF services as the Petitioner was found to not meet the LOCD criteria within the seven-day look-back period for Doors 1, 2, 5 and 6, nor did he meet the criteria in Doors 3 and 4 within the fourteen-day look-back period. The three criteria required in Door 7 were also not met as it was determined Petitioner was not a program participant for at least one year. (Exhibit A, pp 24-30; Testimony.)
4. On December 16, 2019, Regency at Waterford issued Petitioner an Advance Action Notice. The notice indicated Petitioner did not meet the functional eligibility requirement for Medicaid long-term care services. (Testimony.)
5. On February 13, 2020, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A, p 32.)

## **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.) (revised 7/1/19).

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. (revised 7/1/19)

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

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<sup>1</sup> Medicaid Provider Manual (MPM), Nursing Facility Coverages Chapter, July 1, 2019, 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.

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 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 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.”

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

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

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 modified 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 1 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. 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. Specifically, there were other services available in Petitioner's community that would meet Petitioner's needs.

Based on the evidence presented the Department adequately demonstrated that the Petitioner did not meet LOCD eligibility on the review conducted on December 16, 2019. 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 on December 16, 2019 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 does not require a Medicaid Nursing Facility Level of Care.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

CA/sb

*Corey Arendt*  
Corey Arendt  
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  
Lansing, MI  
48933

**Agency Representative**

Allison Pool  
222 N Washington Square  
Suite 100  
Lansing , MI  
48933

**DHHS -Dept Contact**

Jennifer Cornell  
400 S. Pine, 6th Floor  
Lansing, MI  
48909

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED], MI