



Date Mailed: March 31, 2025

Docket No.: 25-007290

Case No.:

Petitioner:



This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

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这是一份重要的法律文件。请让别人翻译文件。

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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 telephone hearing was held on March 27, 2025. Allison Pool, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, Department or MDHHS). Ian Lowers, LOCD Policy Specialist, appeared as a witness. From Ambassador, a Villa Center, Chanelle Anderson, Business Office Assistant; Laura Burkes, Unit Manager; Barbara Harris, Director of Social Services; Sydne Mencer, Social Work Designee; Noriel Deypalubos, RN, MDS Coordinator; and Latanya Ingram, Business Office Manager, also appeared as witnesses.

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 Ambassador, a Villa Center. (Exhibit A, p 5; Testimony.)

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2. On January 26, 2024, a Nursing Facility (NF) Level of Care Determination (LOCD) was completed, which found Petitioner eligible to receive Medicaid reimbursed NF services through Door 1 – Activities of Daily Living. (Exhibit A, pp 8-15; Testimony.)
 3. On January 23, 2025, 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 16-23; Testimony.)
 4. On January 23, 2025, Petitioner was advised of the Department’s action via Advance Action Notice. (Exhibit A, p 65; Testimony.)
 5. On February 18, 2025, Petitioner’s request for hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 4-5.)

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
January 1, 2025, pp 1-14*

A 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 independent, and that he was able to make himself understood. Petitioner scored a 15 (perfect score) on a Brief Interview for Mental Status (BIMS). 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 conditions listed in Door 4 and was not receiving any of the treatments listed in Door 4. Accordingly, Petitioner did 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.

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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.

Neither Petitioner nor the NF requested an immediate review, so Door 8 – Frailty, was not scored.

Petitioner testified that he has been in therapy off and on since he has been in the NF. Petitioner indicated that at times the therapy appeared to be helping but he has aged and is not getting any younger. Petitioner testified that his body is breaking down because of past car accidents and being hurt on the job. Petitioner indicated that his conditions seem to be attacking him as he gets older. Petitioner noted that he was in the NF once before after a mental breakdown, which happens to him when he is under pressure, but he seems to be controlling that a lot better now. Petitioner indicated that the car in the accident he mentioned flipped over three times, which messed up his legs. Petitioner testified that the condition has gotten worse as he gets older and in cold weather. Petitioner also noted that he has terrible chronic bronchitis.

Based on the evidence presented, the Department adequately demonstrated that the Petitioner did not meet LOCD eligibility on the most recent review. Petitioner had previously met the LOCD criteria through Door 1, but on the most recent review, 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. Petitioner's social worker indicated that they are working on a safe discharge plan, but Petitioner was waiting for the hearing to be completed before deciding on where he would like to go.

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, January 1, 224, pp 62-63.*)

However, based on the information available on the latest review, 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 of the most recent review 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 as of the most recent review.

IT IS THEREFORE ORDERED that:

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



ROBERT J. MEADE
ADMINISTRATIVE LAW JUDGE

RM/sj

APPEAL RIGHTS: Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at courts.michigan.gov. The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at <https://rs.michbar.org> or Michigan Legal Help at <https://michiganlegalhelp.org>. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to LARA-MOAHR-DCH@michigan.gov , **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
Michigan Office of Administrative Hearings and Rules
Rehearing/Reconsideration Request
P.O. Box 30639
Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 31st day of March 2025.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

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