



Date Mailed: April 18, 2025

Docket No.: 25-008682

Case No.: [REDACTED]

Petitioner: [REDACTED]

[REDACTED]
MI [REDACTED]

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।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

这是一份重要的法律文件。请让别人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

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 a request for hearing filed on behalf of [REDACTED] (Petitioner).

After due notice, a telephone hearing was held on April 1, 2025. Yvonne Davis, a representative from Elite Guardianship, Petitioner's legal guardian, appeared and testified on Petitioner's behalf. Allison Pool, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Ian Lowers, a Departmental Analyst with the Department, and Cynthia Scott, Minimum Data Set (MDS) Coordinator with The Villa at [REDACTED], 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 1-112. No other proposed exhibits were submitted.

ISSUE

Did the Department properly determine that Petitioner does not require a Medicaid reimbursable 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 Medicaid beneficiary with a legal guardian. (Exhibit A, pages 58, 71).
2. He has been diagnosed with narcissistic personality disorder; adjustment disorder with anxiety, mood disorder, insomnia, schizotypal disorder, and muscle weakness. (Exhibit A, pages 68, 70-72).
3. Between 2012 and January of 2022, Petitioner was homeless. (Exhibit A, page 17).
4. In January of 2022, he was admitted to a hospital with bilateral lower extremity toe gangrene following frostbite and underwent amputations of gangrenous toes. (Exhibit A, page 70).
5. Following a long hospitalization and a determination that he lacks the capacity to make competent decisions for himself, he was placed at The Villa at [REDACTED], Medicaid-certified nursing facility. (Exhibit A, page 70).
6. On February 22, 2024, Petitioner was found to qualify for a Medicaid reimbursable nursing facility level of care following the completion of a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) and due to his behavior of resisting care. (Exhibit A, pages 24-32).
7. On February 19, 2025, the MDS Coordinator at Villa at [REDACTED] conducted another LOCD with respect to Petitioner. (Exhibit A, pages 17-23).
8. In completing that LOCD, the MDS Coordinator reviewed Petitioner's charts and spoke with other staff. (Testimony of MDS Coordinator).
9. She did not speak with Petitioner or Petitioner's guardian. (Testimony of MDS Coordinator).
10. 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 one of the seven doors of that tool. (Exhibit A, pages 17-24; Testimony of MDS Coordinator).
11. On February 19, 2025, Villa of [REDACTED] sent Petitioner an Advance Action Notice stating that it had been determined that Petitioner no longer met the functional eligibility requirement for Medicaid long-term care services. (Exhibit A, page 10).

-
-
12. The notice also stated that, if Petitioner’s guardian disagreed with that decision, she could request a secondary review with iMPROve Health; a Medicaid Fair Hearing with MOAHR; or both. (Exhibit A, pages 10).
 13. No secondary review was requested. (Testimony of Petitioner’s representative; Testimony of Departmental Analyst).
 14. On March 6, 2025, MOAHR received the request for hearing filed by Petitioner’s guardian in this matter. (Exhibit A, pages 8-16).

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 Medicaid-reimbursable nursing facility services:

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.

*MPM, January 1, 2025 version
Nursing Facility Coverages Chapter, page 7*

25-008682

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.

* * *

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, 5, 9-10*

A LOCD is therefore mandated for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE. Moreover, even after admission, a nursing facility resident must also continue to meet the outlined criteria in the LOCD on an ongoing basis.

The LOCD completed on February 19, 2025, was the basis for the action at issue in this case. To be found eligible for Medicaid nursing facility coverage 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 78, 82-85, 87-88

Here, acting for the Department, the nursing facility determined that Petitioner did not pass through any of the above doors in the February 19, 2025 LOCD, and that he was therefore ineligible for nursing facility services through Medicaid.

In appealing that decision, 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 decision was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet his burden of proof, and the Department's decision 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, the MDS Coordinator testified that, based on the charts for Petitioner, Petitioner is independent in all the specific tasks identified in Door 1, and, while Petitioner's guardian testified that Petitioner requires assistance with toilet use, that testimony is unsupported and, regardless, assistance with toileting alone is insufficient to pass through Door 1.

With respect to Door 2, it is undisputed that Petitioner does not have a memory problem and is able to make himself understood. Moreover, there is no showing that Petitioner's cognitive skills for daily decision-making rise to the level of severely impaired as would be required to pass through Door 2 given those other abilities. While the MDS Coordinator did not speak to either Petitioner or Petitioner's legal guardian, as suggested by the applicable Field Definitions, and Petitioner was placed in the long-term care because he generally lacked the capacity to make competent decisions, the assistance identified as necessary by the Petitioner's guardian is not the type identified as daily decision-making in the Field Definition Guidelines; it is undisputed that Petitioner is making daily decisions on his own; and Petitioner's representative's argument primarily involved problems Petitioner could possibly have outside of the facility, as opposed to the daily decisions he is currently making.

Moreover, 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. It does appear that Petitioner can be argumentative and difficult at times, and that he declines some types of assistance, but there is no evidence that it rises to the level of verbal abuse or resistance to care that would cause him to pass through Door 6.

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

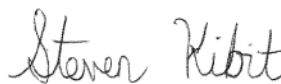
Finally, with respect to Door 7, even if Petitioner has been a nursing facility resident for over a year at the time of the LOCD, which is not clear from the record, there is nothing to suggest that he requires ongoing services to maintain current functional status or that any services he does require are not available through other community, residential, or informal services. Petitioner is not receiving any skilled services in the facility and, as testified by the MDS Coordinator, he can receive any necessary supervision in a group home.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly determined that Petitioner does not require a Medicaid reimbursable nursing facility level of care.

IT IS, THEREFORE, ORDERED that:

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



Steven Kibit
Administrative Law Judge

SK/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.

Via Electronic Mail:

Agency/Department Representative
ALLISON POOL
MDHHS APPEALS SECTION
PO BOX 30807
LANSING, MI 48933
POOLA@MICHIGAN.GOV

Department Contact
LTC OPERATIONS SECTION
MDHHS-BPHASA
400 S PINE ST 5TH FLOOR
LANSING, MI 48933
**MDHHS-
LTCHEARINGS@MICHIGAN.GOV**

Agency/Department Representative
MARY CARRIER
MDHHS APPEALS SECTION
PO BOX 30807
LANSING, MI 48909
MDHHS-APPEALS@MICHIGAN.GOV

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Representative

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]