

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2011-35722 PCE

██████████,

Appellant

_____ /

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████, Community Mental Health, Case Manager, represented the Appellant – who was present and testified. ██████████ RN, Manager of Quality Assurance represented ██████████. She had no witnesses.

ISSUE

Did the Department properly determine that the Appellant is not eligible for PACE services at ██████████?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████-year-old, spend-down Medicaid beneficiary who receives services from Community Mental Health.
2. ██████████ (the Department) is the Program of All-Inclusive Care for the Elderly (PACE) which is geared to the provision of socially and clinically supervised services for an elderly population afflicted with chronic medical conditions. It is located in ██████████ and is authorized for operation by the Michigan Department of Community Health.
3. The Appellant is afflicted with Bipolar schizoaffective disorder, recurrent depression with suicide attempts, DM-2 ID with neuropathy, stage 4 kidney disease with episodes of acute renal failure, recurrent DVT, (while on

Coumadin), chronic pain, anemia of chronic disease and Dementia. He takes a complex regiment of medications to address many of these afflictions. See Testimony and Department's Exhibit A, p. 10.

4. On or about ██████████, the Appellant was screened under the LOC assessment tool as having met eligibility under Door 1 – owing to mobility issues.¹ The Appellant's in-center evaluation was then scheduled for ██████████. ██████████ Department's Exhibit A, p.13.
5. On or about ██████████, the PACE interdisciplinary medical Treatment Team completed its assessment of the Appellant to determine his enrollment prospects in ██████████. Department's Exhibit A, p. 7.
6. After the assessment and review of medical record, the PACE interdisciplinary Treatment Team concluded that the Appellant could not be safely cared for in the community owing to his need for sophisticated care for his acute medical/psychiatric issues – now provided through Community Mental Health and other local healthcare experts. See Testimony of ██████████ and Department's Exhibit A, p. 7.
7. On or about ██████████, notice of the PACE ineligibility determination was sent to Appellant. His further appeal rights were contained therein. Department's Exhibit A, p. 5.
8. The instant request for hearing was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████.

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 Community Health (MDCH) implemented functional/medical eligibility criteria for Medicaid nursing facilities, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

Section 5.1.D. and 5.1.E, of the Medicaid Provider Manual (MPM) references the use of the online Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) tool. The LOCD must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE, where available. MPM, §5.1.D., 5.1.E,

¹ He is described as presenting in wheelchair [for unexplained reasons, presumably chronic pain]

NF Coverages, July 1, 2011, pp. 8-13.

The LOCD tool consists of seven-service entry Doors. The doors are: Activities of Daily Living, Cognition, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependency. In order to be found eligible for services, the Appellant must meet the requirements of at least one Door. The Department presented testimony and documentary evidence that the Appellant did [initially] meet criteria at Door 1 for mobility. Further assessment, however, determined that the Appellant was ineligible for PACE community based services.

A determination of medical/functional ineligibility is an adverse action appealable through the Michigan Department of Community Health. MPM, *Supra* at pages 8-13.

To be eligible for PACE enrollment or continued enrollment, applicants or participants must meet the following requirements:²

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Human Services)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.
- Receive a comprehensive assessment of participant needs by an interdisciplinary team.
- Be appropriate for placement in PACE based on completion of the Michigan Medicaid Nursing Facility Level of Care Determination.
- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.
- Not concurrently enrolled in the MI Choice program.
- Not concurrently enrolled in an HMO.

MPM, PACE, §3.1 Eligibility Requirements, July 1, 2011, at page 3.

In this case, the Appellant's interdisciplinary PACE treatment team completed a service assessment and review. During this process, the treatment team considered the Appellant's eligibility for the PACE program.

² The PACE organization will be held responsible for enrolling only those participants who meet the criteria outlined in this section. MPM, §3.2, *Supra*

The team first applied the Nursing Facility Level of Care (LOC) Assessment and determined that the Appellant did [preliminarily] qualify for the program at Door One for mobility issues. On further assessment, however, the medical reviewers determined that owing to the breadth of his medical need and companion mental health issues that the Appellant would be required to see or treat with many different providers who lacked specialty expertise necessary to consistently or safely meet his service needs. The Department witness testified that level of expertise required to medically manage the Appellant was beyond their institution's service ability and that it was not be a safe environment for the Appellant.

Witness █████ further testified that the medical problem centered on the interrelationship between the Appellant's diverse physical disease process[s] and his allied mental health issues.³

The Appellant testified that he thought the positive aspects of the PACE program outweighed the negative and that he would be able to see his regular medical doctors and enjoy the social aspects of █████ organization at the same time. He stressed the desire to be out in the community receiving services. He added that he has not pursued Community Living Services through Community Mental Health.

The Appellant's representative said that the Appellant had a strong support system and that he was medically stable and that he would benefit from the social aspects of the PACE program. She added that his medication management was also stable having had no real changes in recent history. The Appellant's testimony stressed the desire for medical management, including the prospect for dental care – but did not sufficiently address the behavioral component of his medical picture.

On review, this Administrative Law Judge must uphold the Department's determination of program ineligibility for lack of ability to safely reside/participate in the program having undergone a comprehensive, interdisciplinary medical assessment. The representative's conclusion that the Appellant desired the PACE program for the social aspect was well established on the record; that it "might even" help his physical health underscored, I thought, the PACE reviewer's concern that his case was too complex to safely manage at █████.

The Appellant failed to preponderate his burden of proof that the Department's decision was in error or that he was, in fact, eligible for PACE enrollment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department correctly denied enrollment to the Appellant owing to

³ As an example - one suicide attempt was carried out with Tylenol – while the Appellant obviously survived that attempt he now suffers from renal failure.

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multiple, complex, medical and behavioral health issues which could not be safely addressed by the PACE provider, [REDACTED].

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 8/15/2011

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.