

**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:

██████████.,

Appellant

Docket No. 2011-41955 PCE

Case No. ██████████

**DECISION AND ORDER**

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

After due notice, a hearing was held on ██████████, Social Worker, appeared on behalf of the Appellant, who was present and testified briefly. ██████████, LMSW, 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. Appellant's Exhibit #1.
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 the sequela of a partial amputation/right foot, DM, kidney disease and is confined to a wheelchair. Appellant's Exhibit #1 and See Testimony.
4. The Appellant was assessed by ██████████ homecare nurse on ██████████. He reported a pain level of 6.10 which he described as tolerable. He demonstrated the ability to maneuver within his apartment, go downtown daily,

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transfer and attend to his ADLs – without complication. Department's Exhibit A, p. 2.

5. The Appellant was next assessed by [REDACTED] social worker on [REDACTED]. He reported no pain and was able to complete all of his ADLs and IADLs in addition to going downtown daily in a manual wheelchair. Department's Exhibit A, p. 2.
6. The [REDACTED] enrollment team met on [REDACTED], to review the Appellant's eligibility for PACE and determined that he did not meet a NF LOCD which is necessary for program entry. His few housekeeping needs could be met in the community. The Appellant did not demonstrate frailty. He was found to be independent. Department's Exhibit A, p. 2.
7. On [REDACTED], the Appellant was advised of PACE ineligibility and his further appeal rights were explained in written notice.
8. The instant request for hearing was received by the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED]. Appellant's Exhibit #1.

**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, 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 not meet criteria at any Door. Further assessment by the [REDACTED] Enrollment Team determined that the Appellant was ineligible for PACE services.

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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:<sup>1</sup>

- 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.

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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.

The team first applied the Nursing Facility Level of Care Determination (LOCD) assessment and determined that the Appellant did [preliminarily] qualify for the program on MPRO exception. By ██████████, however, the Appellant reported good mobility and general pain improvement which was verified on further assessment of ██████████ [no pain].

The medical reviewers determined that owing to the breadth of his recovery and mobility that the Appellant did not meet criteria for PACE enrollment and that his few remaining needs could be met by wound care and monitoring – services he was already receiving in the community.

The Appellant's representative said that she was unaware of the Appellant's recent mobility,

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<sup>1</sup> The PACE organization will be held responsible for enrolling only those participants who meet the criteria outlined in this section. MPM, §3,2, *Supra*.

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but feared that owing to a lack of services in the county [REDACTED] he would not be able to secure transportation or further recover from addiction while he deals with the limitations imposed by an amputated foot.

On review, this Administrative Law Judge must uphold the Department's determination of program ineligibility for failure to meet the NF LOCD eligibility standard. The Appellant failed to preponderate his burden of proof that the Department's decision was in error or that he was otherwise 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 PACE enrollment to the Appellant.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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

Date Mailed: 10/5/2011

cc: [REDACTED]

**\*\*\* 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.