

**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) 373-4147

**IN THE MATTER OF:**

██████████,

Appellant

\_\_\_\_\_ /

**Docket No.** 2013-4525 PCE

**Case No.** ██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared without representation. She had no witnesses. ██████████ RN, Manager of Quality Assurance represented ██████████ (the Department). Her witness was ██████████, MSW, Center manager.

**ISSUE**

Did the Department properly determine that the Appellant is not eligible for a new power wheelchair/scooter?

**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, 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 paraplegia and legs wounds. She requires the use of a wheelchair. (Department's Exhibit A, p. 6)
4. On or about ██████████, the Appellant was screened by the LifeCircles Interdisciplinary team who reviewed and denied the Appellant's request for a new power scooter. (Department's Exhibit A, p. 7 and See Testimony)

5. On or about [REDACTED], the Appellant was advised of the denial by Adequate Action Notice. Her further appeal rights were contained therein. (Department's Exhibit A, pp. 8 and 9)
6. 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, October 1, 2012, pp. 9-14.<sup>1</sup>

A determination of medical/functional ineligibility is an adverse action appealable through the Michigan Department of Community Health. MPM, *Supra* at page 14.

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

- 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.

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<sup>1</sup> See also MPM, PACE §3.2, at page 3

- 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, October 1, 2012, at page 3.

The following items and services are excluded unless medically necessity is demonstrated:

The following services are excluded from coverage under PACE:

(a) Any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service.

(b) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and nonmedical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care).

(c) Cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed part of the body resulting from an accidental injury or for

(d) Experimental medical, surgical, or other health procedures.

(e) Services furnished outside of the United States, except as follows:

(1) In accordance with §424.122 and §424.124 of this chapter.

(2) As permitted under the State's approved Medicaid plan.  
(Emphasis supplied)

42 CFR 460.96

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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 request for a new power wheelchair/scooter. The Interdisciplinary Review Team (IRT) review team found the requested device to be not medically necessary. The review team based its decision on criteria found at 42 CFR 460 *Supra*.

The Department witnesses explained that the determination was reached because the request was not medically necessary and because the Appellant had received such device [through Medicare] four (4) years ago.

The Appellant testified that the denial was unfair because she needs the mobility and independence such accommodation provides.

The Department witness also referenced “statistical” evidence in its exhibit alleging that requests for power wheelchairs and scooters were often laden with error. While interesting reading the review team is cautioned to stick to medical necessity. Adherence to policy, regulation and statute [under which the Department prevails easily today] avoids the dangers of relying upon or interpreting suspect numerical probabilities.<sup>2</sup> [See Department’s Exhibit A, pp. 27-28]

On review, this Administrative Law Judge must uphold the Department’s determination of denial for a power wheelchair/scooter for the Appellant as she failed to establish that the Department erred in deciding that her request lacked medical necessity.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department correctly denied the Appellant’s request for a power wheelchair/scooter.

**IT IS THEREFORE ORDERED** that:

The Department’s decision is AFFIRMED.

\_\_\_\_\_  
Dale Malewska  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

[REDACTED]

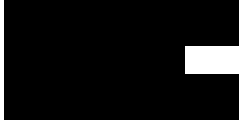
<sup>2</sup> See generally, Bacigal, Ronald, Professor of Law, 2005, *Making the right gamble: The odds on probable cause*, file c:\wp51\articles\baci C:\ 7/21/05 accessed on [REDACTED].

[REDACTED]  
Docket No. 2013-4525 PCE  
Decision & Order

Date Signed: 6/5/2013

Date Mailed: 6/6/2013

cc:



**\*\*\* 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.