

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P. O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax (517) 373-4147

IN THE MATTER OF:

Docket No. 2014-35632 PCE

██████████

██████████

Appellant

_____ /

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 telephone hearing was held ██████████ Appellant's daughter, appeared and testified on behalf of the Appellant. The Appellant and his sister also were present but did not testify. ██████████, Center Manager for ██████████ PACE appeared and testified on behalf of ██████████

ISSUE

Did the Department properly determine that the Appellant was no longer 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 (DOB ██████████) Medicaid beneficiary. (Exhibit A, pp. 7-25 and testimony).
2. ██████████ is a contract agency of the Michigan Department of Community Health (Department) responsible for 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 diagnosed with chronic medical conditions.
3. The Appellant was enrolled in the ██████████ PACE on or about ██████████ under Door #2. (Exhibit A, pp. 1, 7-16).

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4. On or about [REDACTED] PACE determined that Appellant no longer met the criteria for enrollment under either Door 2 or under any Door. Thereafter on [REDACTED] PACE completed a PACE Involuntary Disenrollment Review. (Exhibit A, pp. 24-25).
5. On [REDACTED], R.N., with the MDCH upheld the PACE Involuntary Disenrollment Review that was completed for the Appellant by [REDACTED] Pace. (Exhibit A, p. 25).
6. On [REDACTED], Appellant was given an Advance Action Notice of his denial of enrollment in PACE effective [REDACTED]. (Exhibit A, p. 1).
7. On [REDACTED], the Michigan Administrative Hearing System received Appellant's request for a hearing. (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 the Program of All-Inclusive Care for the Elderly (PACE) program. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

The *Medicaid Provider Manual, Nursing Facility Coverages*, §§5.1.D. & 5.1.E, reference the use of the online Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) too for the PACE program. The LOCD must be completed for all Medicaid-reimbursed admissions to nursing facilities or enrollments in MI Choice or PACE, where available Medicaid Provider Manual, Nursing Facility Coverages, §§5.1.D. & 5.1.E, January 1, 2014, pp. 9-14.

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 *Medicaid Provider Manual, Program of All-Inclusive Care for the Elderly* chapter provides in part:

3.1 Eligibility Requirements

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.
- 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. [p. 3].

3.2 COMPLETION OF THE MEDICAID NURSING FACILITY LOC DETERMINATION

A PACE applicant's eligibility for coverage of nursing facility services and enrollment in the PACE organization is determined by the online application of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). The PACE organization will not be reimbursed for nursing facility services rendered when the applicant is determined not to meet the LOCD criteria. Providers must submit the LOCD information into its online version no later than fourteen (14) calendar days following the start of services. Instructions and required forms related to the completion of the Medicaid Nursing Facility Level of Care Determination are available on the MDCH website. (Refer to the Directory Appendix for website information.)

The LOCD must be completed by a health professional (physician, registered nurse, licensed practical nurse, clinical social worker (BSW or MSW), or physician assistant) representing the proposed provider. Nonclinical staff may perform the evaluation when clinical oversight by a professional is performed. The PACE organization will be held responsible for enrolling only those participants who meet the criteria outlined in this section.

The Michigan Medicaid Nursing Facility Level of Care Determination must be completed using the online version in the following situations:

- all new enrollments of Medicaid-eligible beneficiaries.
- re-enrollment of Medicaid-eligible beneficiaries.
- significant change in condition of a current PACE Medicaid-eligible beneficiary.

The online LOCD must be completed only once for each admission or readmission to the program. [p. 3-4].

* * *

3.4 NURSING FACILITY LEVEL OF CARE EXCEPTION PROCESS - EXCEPTION REVIEW

A Nursing Facility (NF) Level of Care (LOC) Exception Process is a review that is available for financially eligible beneficiaries who have demonstrated a significant level of long term care need but do not meet the LOCD. The NF LOC Exception Process is initiated when the PACE organization telephones the MDCH designee and requests the NF LOC Exception Review on the date that the applicant was determined ineligible based on the online version of the LOCD. The NF LOC Exception criteria and information on how to request an Exception Review is available on the MDCH website. (Refer to the Directory Appendix for website information.) [p. 4].

3.8 ADVERSE ACTION NOTICE

When the provider determines that the beneficiary does not qualify for services based on the Michigan Medicaid Nursing Facility Level of Care Determination, the organization must immediately issue an adverse action notice to the beneficiary or his authorized representative. The action notice must include all of the language of the sample letters for long term

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care. Copies of the letters are available on the MDCH website. (Refer to the Directory Appendix for website information.)

As with any benefit denial, the beneficiary may request an administrative hearing. The Michigan Administrative Hearing System (MAHS) Policies and Procedures Manual explains the process by which each different case is brought to completion. The manual is available for review on the MDCH website. (Refer to the Directory Appendix for MAHS contact and website information.) [p. 5].

The Department's witness, [REDACTED] Center Manager for [REDACTED] PACE presented testimony and documentary evidence demonstrating that the Appellant was disenrolled from PACE on June [REDACTED]. He was disenrolled because he did not meet criteria under any Door of the LOCD and was determined to be ineligible for PACE services as an exception under Door 7. [REDACTED] stated the Appellant entered their program in [REDACTED]. He stated the Appellant qualified under Door 2, because of mild cognitive impairment. (See Exhibit A, pp. 7-15). Appellant also had cardiac concerns, depression, increased pain and elevated blood pressure.

[REDACTED] stated that over the course of his enrollment in the PACE program, Appellant demonstrated significant improvement in cognitive functioning to the point that he no longer qualified for the PACE program under Door 2. (See Exhibit A, pp. 16-20). [REDACTED] stated the Appellant's cardiac status was determined to be stable, issues with depression were resolved, elevated blood pressure and pain were being controlled with medications, so he did not qualify for the PACE program under any of the Doors in the LOCD. (See Exhibit A, pp. 21-25). [REDACTED] also referenced the letter prepared by their Clinical Physician, [REDACTED], [REDACTED], which established that the Appellant's medical conditions were stable and that he no longer met the nursing home eligibility requirement on the LOCD to qualify for the PACE program. (See Exhibit A, p. 24).

Finally, [REDACTED] acknowledged that on [REDACTED] with the Michigan Department of Community Health, the person at the State level responsible for final approval of PACE disenrollments, sent her approval of the Appellant's disenrollment from [REDACTED] PACE program. The [REDACTED] PACE Involuntary Disenrollment Review submitted by [REDACTED] states that the Appellant did not meet the LOCD and he has no qualifying cognitive impairment and has the ability to drive and work on tractors at his rural [REDACTED] home. The review also states that the Appellant should remain at his current level and would be safe in the community without [REDACTED] supports. (See Exhibit A, p. 25).

The Appellant's daughter testified she was a little concerned that the Appellant was pulled out of [REDACTED] before he could be checked for prostate cancer and bladder cancer. Appellant's daughter said the Appellant continues to be extremely dizzy and has fallen down and broke his glasses. She said he still has some depression over his ex-wife after [REDACTED] years. Appellant's daughter said things are getting worse, and

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Appellant would really be lost were it not for [REDACTED]. She said he is really lost without her help. Appellant's daughter said she can't be with the Appellant 24/7 and she can't afford to pay for extra help. She acknowledged that the Appellant was receiving help from someone who assists with the Appellant's medications through Four Points, and someone else comes in and helps clean up the Appellant's house. Appellant's daughter said the Appellant has days he can't walk around the kitchen without getting too dizzy. Also the bottoms of his feet bother him some days that he can't get his shoes on or even walk. Appellant's daughter said her father misses the people at the Center. She said her father takes five naps per day and has a lot of fatigue due to all the medications he is currently on.

[REDACTED] provided testimony that the Appellant had been a participant in the PACE for over one year, i.e., since [REDACTED]. However, I find based on the evidence presented, that the Appellant no longer qualifies for program participation under either Door 2 or Door 7. The evidence shows the Appellant does not require ongoing PACE services to maintain current functional status, and there are services available within the community that can meet the Appellant's needs. Therefore, Appellant is not eligible for PACE services at this time.

I find, based on the information available at the time of the review, that the Department correctly determined the Appellant was not eligible for PACE services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's enrollment in PACE.

IT IS THEREFORE ORDERED that:

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

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Acting Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

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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 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.