

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. 2014-5908 PCE

██████████

██████████

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. ██████████ appeared and testified on Appellant's behalf.¹ Appellant also testified on her own behalf. ██████████, Quality Assurance and Program Integrity Manager, appeared and testified on behalf of Respondent ██████████.

ISSUE

Did Respondent properly deny Appellant's request for services through the Program of All-Inclusive Care for the Elderly (PACE)?

FINDINGS OF FACT

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

1. ██████████ is an organization that contracts with the Michigan Department of Community Health ("MDCH" or "Department") and oversees the PACE program in Appellant's geographical area. (Testimony of Ferrara).
2. Appellant is a ██████ year-old woman who has been diagnosed with morbid obesity; depression; urinary incontinence; diabetes; hyperlipidemia; a history of endometrial cancer; and venous insufficiency in her lower extremities. (Respondent's Exhibit A, page 1; Respondent's Exhibit B, page 1; Respondent's Exhibit C, page 1).

¹ Appellant's representative is employed by Respondent as an intake coordinator. Appellant confirmed on the record that she is aware of her representative's position and wanted Ms. ██████████ to represent her.

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3. Appellant applied for PACE services through ██████████ and an initial intake was performed on ██████████ (Respondent's Exhibit A, pages 1-10).
4. During that intake, the intake worker went through the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) tool with Appellant. (Respondent's Exhibit A, pages 1-10; Testimony of Appellant's representative).
5. Based on Appellant's verbal report that she needs assistance with cleaning up after bowel movements, the intake worker determined that Appellant appeared to both pass through Door 1 of the LOCD and to be eligible for the PACE program. (Respondent's Exhibit A, pages 1-10; Testimony of Appellant's representative).
6. On ██████████, an in-home assessment was performed by a registered nurse/case manager with Appellant. (Respondent's Exhibit D, pages 1-4).
7. During that assessment, it was noted that Appellant uses a walker to get into the bathroom, transfers independently on-and-off the toilet, and has bars or sturdy supports near the toilet. (Respondent's Exhibit D, page 2).
8. On September ██████████, an in-home assessment was performed by an occupational therapist with Appellant. (Respondent's Exhibit C, pages 1-7).
9. During that assessment, it was determined that Appellant is independent in all activities of daily living, but that she uses adaptive equipment when dressing or toileting. (Respondent's Exhibit C, page 1).
10. With respect to toileting specifically, the occupational therapist wrote that Appellant demonstrated independent toilet transferring for him, with the use of a grab bar, and that Appellant has a toilet aide that she does not like. (Respondent's Exhibit C, pages 4-5).
11. On ██████████, an in-home assessment was performed by a physical therapist with Appellant. (Respondent's Exhibit B, pages 1-4).
12. During that assessment, the physical therapist noted that Appellant was independent in toileting, but used adaptive equipment. (Respondent's Exhibit B, pages 3-4).
13. Based on the assessments made by the nurse, occupational therapist and physical therapist, ██████████ determined that Appellant did not pass through any door of the LOCD and did not qualify for the PACE program. (Testimony of Ferrara).

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14. On [REDACTED] sent Appellant written notice that her request for PACE services was being denied. (Testimony of Appellant's representative).
15. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Petitioner's Exhibit 1, page 1).
16. In that request, Appellant notes that she is at risk for falls and can neither bathe nor toilet by herself. (Petitioner's Exhibit 1, page 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.

PACE services are available as part of the Medicaid program:

The Program of All-Inclusive Care for the Elderly (PACE) is an innovative model of community-based care that enables elderly individuals, who are certified by their state as needing nursing facility care, to live as independently as possible.

PACE provides an alternative to traditional nursing facility care by offering pre-paid, capitated, comprehensive health care services designed to meet the following objectives:

- Enhance the quality of life and autonomy for frail, older adults;
- Maximize the dignity of, and respect for, older adults;
- Enable frail, older adults to live in the community as long as medically and socially feasible; and
- Preserve and support the older adult's family unit.

The PACE capitated benefit was authorized by the Balanced Budget Act of 1997 and features a comprehensive service delivery system with integrated Medicare and Medicaid financing.

An interdisciplinary team, consisting of professional and paraprofessional staff, assesses beneficiary needs, develops a plan of care, and monitors delivery of all services (including acute care services as well as nursing facility services, when necessary) within an integrated system for a seamless provision of total care. Typically, PACE organizations provide social and medical services in an adult day health center supplemented by in-home and other services as needed.

The financing model combines payments from Medicare and Medicaid, allowing PACE organizations to provide all needed services rather than be limited to those reimbursable under the Medicare and Medicaid fee-for-service systems. PACE organizations assume full financial risk for beneficiary care without limits on amount, duration, or scope of services.

Physicians currently treating Medicaid patients who are in need of nursing facility care may consider PACE as an option. Hospital discharge planners may also identify suitable candidates for referral to PACE as an alternative to a nursing facility. (Refer to the Directory Appendix for PACE contact information.)

*Medicaid Provider Manual (MPM), July 1, 2013 version
PACE Chapter, page 1*

Appellant applied for such services in this case, but was denied on the basis that she did not meet the eligibility requirements.

Regarding eligibility for the PACE services, Department policy provides that, among other things, a person must meet a nursing facility level of care:

3.1 ELIGIBILITY REQUIREMENTS

To be eligible for PACE enrollment, applicants 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.
- A determination of functional/medical eligibility based upon the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online within fourteen (14) calendar days from the date of enrollment into the PACE organization.
- 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.

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.

*MPM, July 1, 2013 version
PACE Chapter, page 3*

The LOCD tool referenced in the above policy 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, Appellant must meet the requirements of at least one Door.

Here, only Door 1 is in dispute and, with respect to that door, the LOCD tool states:

Door 1
Activities of Daily Living (ADLs)

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

It is undisputed in this case that Appellant is independent in the areas of bed mobility, transferring, and eating. However, Appellant also reported during her initial intake that she needs assistance with cleaning up after bowel movements and she and her representative believe that she therefore requires limited assistance with toileting and passes through Door 1. Appellant testified to the same needs during the hearing itself.

Appellant bears the burden of proving by a preponderance of the evidence that ██████████ ██████ erred in determining that she did not pass through Door 1 and, despite the above testimony and evidence, this Administrative Law Judge finds that Appellant has failed to

meet her burden of proof. Three assessments after the initial intake all found Appellant to be independent in bathing. Those assessments were performed by a registered nurse, an occupational therapist and a physical therapist, respectively; they were completed in Appellant's home; and they are more detailed than the initial intake. Their findings are also more consistent with Appellant's undisputed ability to complete other tasks and personal care activities independently.

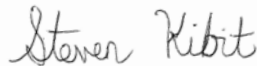
Accordingly, this Administrative Law Judge finds that Appellant and her representative have failed to meet their burden of proof and that Respondent's decision to deny Appellant's request for services must be sustained.

DECISION AND ORDER


The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Centra Care properly denied Appellant's request for PACE services.


IT IS THEREFORE ORDERED that:

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




Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 

Date Mailed: 

SK/db

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.