STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

[redacted],

Docket No. 15-020503-PCE
Case No. [redacted]

Appellant.
_____/

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 [redacted]. [redacted], Appellant's daughter, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. [redacted], Director, appeared and testified on behalf of Respondent, [redacted]. (Respondent or [redacted]). [redacted], Quality Assurance Manager and [redacted], Director, Quality Improvement, appeared as witnesses for Respondent.

ISSUE

Did Respondent properly deny Appellant's request for repair of her electric wheelchair 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. Life Circles is an organization that contracts with the Michigan Department of Health and Human Services ("MDHHS" or "Department") and oversees the PACE program in Appellant's geographical area. (Exhibit A; Testimony).

2. Appellant is a [redacted] year-old woman, born [redacted], who has been diagnosed with foot drop and neuropathy, which makes mobility difficult. (Exhibit A, pp 5, 7; Testimony).

3. On [redacted], Appellant requested that her electric wheelchair be repaired by [redacted]. (Exhibit A, p 7; Testimony)

4. On [redacted], [redacted] sent Appellant written notice that her request for repair of her electric wheelchair through the PACE program

was being denied. The Notice indicated that the request was denied because the electric wheelchair was determined to be not necessary for mobility based on Medicare guidelines. (Exhibit A, pp 9-11; Testimony).

5. On [redacted], the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (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.

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.)

SECTION 2 – SERVICES

The PACE organization becomes the sole source of services for Medicare and Medicaid beneficiaries who choose to enroll in a PACE organization.

The PACE organization is able to coordinate the entire array of services to older adults with chronic care needs while allowing elders to maintain independence in the community for as long as possible. The PACE service package must include all Medicare and Medicaid covered services, in addition to other services determined necessary by the interdisciplinary team for the individual beneficiary. Services must include, but are not limited to:

- Adult day care that offers nursing, physical, occupational and recreational therapies, meals, nutritional counseling, social work and personal care
- All primary medical care provided by a PACE physician familiar with the history, needs and preferences of each beneficiary, all specialty medical care, and all mental health care
- Interdisciplinary assessment and treatment planning

- Home health care, personal care, homemaker and chore services
- Restorative therapies
- Diagnostic services, including laboratory, x-rays, and other necessary tests and procedures
- Transportation for medical needs
- All necessary prescription drugs and any authorized over-the-counter medications included in the plan of care
- Social services
- All ancillary health services, such as audiology, dentistry, optometry, podiatry, speech therapy, prosthetics, durable medical equipment, and medical supplies
- Respite care
- Emergency room services, acute inpatient hospital and nursing facility care when necessary
- End-of-Life care

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3.11 APPLICANT APPEALS

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3.11.C. PACE SERVICES

Noncoverage or nonpayment of services by the PACE organization for a beneficiary enrolled in PACE is an adverse action. If the beneficiary and/or representative disagrees with the noncoverage or nonpayment of services by the PACE organization, they have the right to request an administrative hearing before an administrative law judge. Information regarding the appeal process may be found on the Michigan Administrative Hearing System (MAHS) website. (Refer to the Directory Appendix for website information.) The beneficiary may request continuation of the disputed service with the understanding that he may be

> liable for the cost of the disputed service if the determination is not made in his favor.
>
> *Medicaid Provider Manual*
> *Program of All-Inclusive Care for the Elderly Chapter*
> *October 1, 2015, pp 1-2, 6*

With regard to power wheelchairs, Medicare guidelines state:

> Medicare Part B (Medical Insurance) covers power-operated vehicles (scooters), walkers, and wheelchairs as durable medical equipment (DME). Medicare helps cover DME if:
>
> - The doctor treating your condition submits a written order stating that you have a medical need for a wheelchair or scooter for use in your home.
>
> - You have limited mobility and meet **all** of these conditions:
>
> - You have a health condition that causes significant difficult moving around in your home.
>
> - You're unable to do activities of daily living (like bathing dressing, getting in or out of a bed or chair, or using the bathroom), even with the help of a cane, crutch, or walker.
>
> ****
>
> *(Exhibit A, p 15)*

[redacted] Director testified that they received a request from Appellant to repair her electric wheelchair, which the program had not purchased originally, and that an estimate of the repairs came back at approximately $[redacted]. [redacted] Director indicated that upon review, it was determined that the repairs were not covered because Appellant did not meet the Medicare guidelines for an electric wheelchair. [redacted] Director indicated that Appellant was determined to be independent in all of her Activities of Daily Living (ADL's) and that both a Physical Therapy Evaluation and an Occupation Therapy Evaluation indicated that Appellant had the ability to ambulate independently with an assistive device, in this case a walker. (Exhibit A, pp 18-43)

Appellant agreed that she is ambulatory with her walker, but indicated that because of her conditions, she is subject to falling. Appellant testified that when she falls with her walker, the walker comes down with her, causing additional injury. Appellant indicated that she has dropsy in her right foot and neuropathy in both of her legs. Appellant

testified that she has tried a brace, but it did not work. Appellant indicated that with the electric wheelchair, she can bend over without falling. Appellant testified that she has had her walker for 8 years and that it had been prescribed by her physician.

Appellant's daughter testified that her mother has had the electric wheelchair for some time and that she needs the assistance of the wheelchair to move about the home. Appellant's daughter indicated that the walker does not help her because it comes down with her when she falls. Appellant's daughter testified that Appellant now does not like to get up because she is afraid of falling and her lack of mobility is causing her to be more depressed. Appellant's daughter indicated that Appellant lives alone in a single story home and that she visits at least every other day.

Appellant bears the burden of proving by a preponderance of the evidence that Life Circles erred in denying her request for repair to her electric wheelchair. Based on the above testimony and evidence, this Administrative Law Judge finds that Appellant has failed to meet her burden of proof. Three different assessments all indicate that Appellant is independent with her ADL's and is mobile with her walker. As such, Appellant does not meet the Medicare guidelines for an electric wheelchair.

Accordingly, this Administrative Law Judge finds that Appellant has failed to meet her burden of proof and that Respondent's decision to deny Appellant's request for repair of her electric wheelchair must be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Life Circles properly denied Appellant's request for repair of her electric wheelchair.

IT IS THEREFORE ORDERED that:

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

Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Mailed: February 11, 2016

RJM/[redacted]

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 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.