



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: May 12, 2020
MOAHR Docket No.: 20-001995
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

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

After due notice, a hearing was held on April 30, 2020. [REDACTED], Petitioner's Daughter, appeared on behalf of Petitioner. Sonja Love Felton, Executive Director, appeared on behalf of Respondent, Huron Valley Pace (Department). Tamika Johnson, Social Worker, Denise Brown, Center Director, and Nakia Pritchard, In-House Support Manager, appeared as witnesses for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly deny Petitioner's request for additional PACE services?

FINDINGS OF FACT

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

1. Department is an organization that contracts with the Michigan Department of Health and Human Services ("MDHHS") and oversees PACE in Department's geographical area.
2. In January of 2020, Petitioner enrolled in PACE. (Testimony.)
3. Prior to enrollment, Petitioner received home assistance via private pay. (Testimony.)
4. On January 8, 2020, Petitioner participated in an assessment. (Exhibit A, p 19.)

5. At the time of the assessment, Petitioner lived independently in an apartment. (Exhibit A, p 26.)
6. At the time of the assessment, Petitioner suffered from CKD stage 3, chronic anemia, chronic diastolic HF with preserved EF, aortic stenosis S/P TAVR, COPD, atrial fibrillation with LT anticoagulation and chronic weakness. (Exhibit A, p 26.)
7. At the time of the assessment, Petitioner presented with good judgment and awareness with no observable impairment in understanding while able to express complex ideas. (Exhibit A, pp 28-29.)
8. During the assessment, Petitioner reported he was able to bath himself through the use of assistive devices; able to groom himself with some assistance; able to dress himself with some assistance; able to toilet himself with some assistance; able to feed and eat independently. Petitioner also reported that he does not perform the tasks of laundry, housekeeping, heavy chores or shopping. Petitioner reported that he requires assistance with medication management and had recently had a book published. (Exhibit A, pp 30-33, 45.)
9. Following the assessment, Petitioner was approved for 15 hours a week of homecare and attendance at the PACE center 1 day a week. (Exhibit A, p 53; Testimony.)
10. Around the time of approval, Petitioner's family requested 35-40 hours a week of homecare. (Exhibit A, pp 4, 11; Testimony.)
11. On January 31, 2020, the Department notified Petitioner that the request for additional hours was denied. The rational for the denial was the following:

IDT denies request for 40 hours of homecare for ppt. Prior to beginning at PACE family and ppt have a written document stating that they will be providing the additional homecare through a private homecare agency. Written agreement on participants file. Participant is currently receiving the maximum amount of homecare based on RAD tool score. RAD tool completed was a score of 40 placing participant in the 8-15-hour range. [REDACTED] (SW) will follow up with participant with participant regarding denial. [REDACTED] will complete letter of denial. (Exhibit A, 11; Testimony.)
12. On March 17, 2020, the Michigan Office of Administrative Hearings, received from Petitioner, a request for hearing.
13. On April 15, 2020, Petitioner was approved for PACE center attendance 5 days a week. (Exhibit A, p 17; Testimony.)

14. As of the time of the hearing, and at all times relevant to this proceeding, the record was absent of any documentation to indicate the Petitioner had a legal guardian as assigned by the courts or a power of attorney. (Exhibit A; Testimony.)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 and, with respect to the program and its services, the Medicaid Provider Manual (MPM) provides:

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 care¹

Moreover, regarding PACE services and applicant appeals, the MPM also states in part:

3.13.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

¹ *Medicaid Provider Manual*, PACE, April 1, 2019, pp 1-2.

the disputed service if the determination is not made in his favor.²

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only the amount and timing of those services that are in dispute, with Petitioner appealing Respondent's decision to deny Petitioner's request for 20-25 additional home care hours per week.

In appealing Respondent's decision, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred.

Given the record in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must therefore be affirmed. Petitioner continues to be authorized for a significant amount of home care services and, as fully detailed by Respondent's witnesses, the authorized hours appear to be sufficient to meet current care needs, especially given Petitioner's other services; the lack of any changes in his condition or needs; natural supports; and the availability of additional services at Department's Center. Moreover, while Petitioner's representative testified that the approved hours are insufficient, they failed to identify specifically how the allocated hours could not meet the Petitioner's needs. Although the representative indicated the Petitioner often soiled themselves during the night. The representative failed to show why the hours could not be moved around to alleviate this issue.

Petitioner also appeared to argue the Department placed a great deal of weight on self-reporting and hinted that the Petitioner himself could not make sound decisions himself. The record however is void of any evidence of the Petitioner not being able to make his needs known.

Based on these findings, the Department's decision should be affirmed.

² *Id.* pp 7-8.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Department properly denied Petitioner's request for additional services.

IT IS, THEREFORE, ORDERED that:

Department's decision is **AFFIRMED**.

CA/sb



Corey Arendt

Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Roxanne Perry
400 S PINE ST
CAPITAL COMMONS
LANSING, MI
48909

Authorized Hearing Rep.

[REDACTED]
[REDACTED], NY
[REDACTED]

Petitioner

[REDACTED]
[REDACTED], MI
[REDACTED]

Community Health Rep

Huron Valley PACE
2940 Ellsworth Rd
Ypsilanti, MI
48197