



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 14, 2020
MOAHR Docket No.: 20-004625
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was held on August 18, 2020. [REDACTED], Petitioner's daughter, appeared and testified on Petitioner's behalf. Sonja Love Felton, Executive Director, represented Respondent Huron Valley PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Lequel Moore, Social Worker; Labarus O'Kammer, Nurse Practitioner; Denise Brown, Center Director; and Raluca Williams, Clinic Registered Nurse (RN); testified as witnesses for Respondent.

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-61. Petitioner did not submit any exhibits.

ISSUE

Did Respondent properly deny Petitioner's request for placement in an assisted living facility?

FINDINGS OF FACT

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

1. Respondent is an organization that contracts with the Michigan Department of Health and Human Services ("MDHHS" or "Department") and oversees PACE in Petitioner's geographical area.
2. Petitioner is an eight-six (86) year-old woman who has been diagnosed with, among other conditions, dementia. (Exhibit A, pages 24-31; Testimony of Petitioner's representative).

3. Petitioner lives with her daughter and son-in-law, though there is tension between Petitioner and her son-in-law. (Testimony of Petitioner's representative).
4. She has also been enrolled in PACE and receiving services through Respondent. (Exhibit A, pages 19-23).
5. Prior to the COVID-19 pandemic, Petitioner was coming into Respondent's day center five days a week. (Testimony of Social Worker).
6. Moreover, while Respondent subsequently limited the number of participants that were allowed at the day center due to the pandemic, Petitioner was still permitted to attend. (Exhibit A, page 10).
7. However, Petitioner's representative determined that Petitioner would not attend the day center due to safety concerns. (Testimony of Petitioner's representative).
8. Respondent further authorized respite care services for Petitioner, but Petitioner's daughter did not want anyone coming into their home because of her husband's health issues. (Exhibit A, page 13).
9. On May 8, 2020, Petitioner eloped from her home. (Testimony of Social Worker).
10. She was subsequently found by the police approximately a mile away. (Testimony of Petitioner's representative; Testimony of Social Worker).
11. On May 11, 2020, Petitioner's family requested that Petitioner be permanently placed in an assisted living facility. (Exhibit A, page 17; Testimony of Social Worker).
12. On May 12, 2020, Petitioner's daughter also reported that Petitioner's symptoms of dementia have increased, and that Petitioner's daughter is stressed out from caring for both Petitioner and Petitioner's daughter's husband, who has lung and prostate cancer. (Exhibit A, page 29)
13. On May 14, 2020, Respondent sent Petitioner written notice that her request for placement had been denied based on a team decision to implement interventions, including three weeks of respite care services and day center attendance when appropriate. (Exhibit A, pages 1-2).
14. The respite care services were provided through the assisted living facility and Petitioner stayed there for three weeks. (Exhibit A, pages 15-16; Testimony of Social Worker).
15. Petitioner was also provided with a GPS tracker upon her return to her home. (Exhibit A, page 30; Testimony of Social Worker).

16. However, Petitioner has eloped again since returning home after arguments with her son-in-law. (Testimony of Petitioner's representative).
17. On July 27, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter with respect to the denial of the request for permanent placement in an assisted living facility. (Exhibit A, pages 3-9).

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 care

SECTION 3 – ELIGIBILITY AND ENROLLMENT

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 Health and Human Services (MDHHS).)

- 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.

*MPM, April 1, 2020 version
PACE Chapter, pages 1-3
(Emphasis added)*

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only the denial of a particular service in dispute, with Petitioner requesting placement in a nursing facility and Respondent denying the request on the basis that other interventions can meet Petitioner's needs while keeping her in the community.

Given the above findings of fact and applicable policies, the undersigned Administrative Law Judge finds that Respondent properly denied Petitioner's request.

Petitioner's representative is seeking a permanent placement for Petitioner in a nursing facility, but it is not clear that such a service can be provided by PACE. While acute nursing facility care may be covered by PACE when necessary, a permanent placement in a nursing facility is not a covered service identified in the above policy, and such assistance would appear to contradict the whole purpose of PACE. As discussed in the above policy, PACE provides an alternative to traditional nursing facility care in order to "[e]nable frail, older adults to live in the community as long as medically and

socially feasible”; and, to be eligible for PACE enrollment, applicants must be “capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.” If Petitioner’s representative is correct that Petitioner can no longer safely reside in the community even with services and that the requested permanent placement is necessary, then Petitioner would no longer qualify for PACE at all.¹

Moreover, to the extent a permanent placement is covered, or Petitioner just seeks temporary acute nursing facility care, the record fails to support Petitioner’s request. Petitioner’s representative may be overwhelmed at times by caring for both her husband and Petitioner, with her husband also limited in the care he can provide to Petitioner due to his own health concerns, but Respondent expressly approved respite care services, both in a facility and outside a facility, to assist in maintaining the goal of Petitioner living in a natural community home by providing relief to Petitioner’s representative from daily stress and care demands. Similarly, while Respondent has limited the number of participants that are allowed at its day center due to the COVID-19 pandemic, Petitioner was still permitted to attend and receive her previously authorized services there.

Petitioner’s representative is understandably concerned about sending Petitioner to Respondent’s day center or allowing someone to enter her home, but those concerns and preferences do not demonstrate medical necessity for the requested service and Respondent’s decision must therefore be affirmed.


DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly denied Petitioner’s request for placement in an assisted living facility

IT IS, THEREFORE, ORDERED that:

Respondent’s decision is **AFFIRMED**.

SK/sb



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

¹ As discussed during the hearing, Petitioner and her representative are free to request nursing facility services through MDHHS/Medicaid, and, given the similarity between the requirements for PACE services and nursing facility services, she almost certainly meets the requirements for nursing facility services through Medicaid. However, such a request should not be made to Respondent and is beyond the scope of this proceeding.

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

Petitioner

[REDACTED], MI

Community Health Rep

Huron Valley PACE
2940 Ellsworth Rd
Ypsilanti, MI
48197

Authorized Hearing Rep.

[REDACTED], MI