



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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]

Date Mailed:
December 10,
2020

MOAHR

Docket No.:
20-005616

Agency No.:

[REDACTED]

Petitioner:

[REDACTED]

[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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on November 17, 2020.

Petitioner appeared and testified on his own behalf. Michelle Reardon, Quality Assurance Provider, appeared and testified on behalf of Respondent PACE North, a Program of All-Inclusive Care for the Elderly (PACE) organization. Nicole Farkas, Center Director, also testified as a witness for Respondent.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit #1. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A.

ISSUE

Did Respondent properly deny Petitioner's request for hand surgery?

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. On August 1, 2020, Petitioner enrolled in PACE and had his case opened with Respondent.
(Testimony of Center Manager).

3. On August 12, 2020, Respondent received a request for hand surgery for Petitioner. (Exhibit A, page 2; Testimony of Center Manager).
4. In response to that request, a Dr. [REDACTED], M.D., spoke with Petitioner. (Exhibit A, page 2).
5. Dr. [REDACTED] then documented the

following:

Our
conversation is
well
documented in
the clinical
record, but he
has seen a
hand surgeon
in Traverse
City, Gaylord,
UofM, who
declined

surgery. He states his records were also sent to surgeons at Saint Joanne in Ann Arbor and the orthopedic surgery department at UofM, and they declined to offer surgery. He eventually

ended up at Spectrum with a surgeon who said he would do the surgery. He feels he has nothing to lose because he reports only 10% function of his left hand. I do [sic] point out that he could have

worse
outcome. By
his example his
first 2 hand
surgeries made
him worse and
his recent
prostrate
surgery made
him worse. We
discussed
obtaining
records from
these prior

surgeons to
evaluate why
they either did
not recommend
surgery or felt
they personally
could not do it
before we
could offer
approval.

Most effective
in supporting
the

participant's
desired
outcome/Reco
mmendation by
this assessor:
IDT will deny
his request at
this time to
obtain old
records and
review the
rationale for
prior hand
surgeons to

decline
surgery.

Exhibit A, page 2

6. Respondent then extended the period for responding to Petitioner's request for five days so it could obtain records from all his physicians. (Exhibit A, page 3),

7. Some records Respondent received

were from University of Michigan Medicine. (Exhibit A, pages 4-5).

8. In the first report from the University of Michigan, dated March 11, 2019, Physician Assistant [REDACTED] [REDACTED] wrote that Petitioner visited with her and Dr. [REDACTED] [REDACTED], M.D., to address Petitioner's left-hand

dysfunction. (Exhibit A,
page 4).

9. She also wrote that:

Plan: We can consider MCP joint arthroplasty for the left index, middle, ring, and small fingers. He will work with a therapist today to review protocol. He

understands he will need several visits in this office to initiate therapy and monitor his progress.

Given his complex medical history, we will need a note from his primary care

physician
evaluating his
blood work to
evaluate
anemia or
other medical
issues. We will
also need
medical
clearance. The
patient will
need to
arrange
support and

transportation,
which he states
is not a
problem for
him. We would
like him to
come to clinic
for a preop
clinic
evaluation prior
to his surgery
in the near
future.

Exhibit A, page 5

10. However, in a May 22, 2019 note regarding another visit, Dr. [REDACTED] wrote in part:

[Petitioner] is a [REDACTED]-year-old gentleman with known history of rheumatoid arthritis, who was initially seen here for

evaluation of
left hand MCP
subluxation.

He desired
implant
arthroplasty of
the index,
middle, ring,
and small
fingers. He is
blind and
required
assistance for
ADL's. He

assured us that he would have assistance for the post-surgery recovery period for the 6 weeks of splinting. Therefore, we planned for surgery in April, but with approval from his treating

physicians and a review of his records by our anesthesiology associates.

The anesthesia team reviewed his records and noted the patient had been to a local ED for a cardiac issue, and the records

indicated he
did not have
adequate home
support. We
were
concerned it
would be
significantly
challenging for
him to go
through
recovery for the
arthroplasty, so
we cancelled

the surgery and
asked that he
return to the
clinic for
another
discussion.

Our staff has
been calling his
MD's and
contacting
social services
to see what we
could do to
help with

getting his
adequate
support to
undergo
surgery. We
were unable to
find adequate
support for him
locally nor were
we able to get
a Michigan
visiting nurse to
be able to
support him in

his local area
post-surgically
as well. For
this
appointment,
today, we had
asked that he
come with a
support system
to provide that
he had post-
surgical care.
He was unable
to find support

for himself
today to bring
with him.

* * *

Plan: We have
explored
avenues both
locally and
within our own
system without
success to find
him help for
recovery. We

do not believe that we will be able to offer him surgery that would adequately take care of his pain or stiffness as all his joints are stiff. He was disappointed in our decision and insists on

having surgery.
We offered to
refer him to
another hand
surgeon. He
has requested
to be seen by
another
surgeon,
specifically a
male surgeon,
and he has
requested to be
seen in

Orthopaedic
[sic] Surgery.
Therefore, we
placed a
referral at his
request. He
will follow up in
this clinic as
needed.

I was physically
present for the
E/M service
provided. I

agree with the
note and plan
which I have
reviewed and
edited where
appropriate. I
personally saw
and examined
this patient. ■
y.o. male with
RA and MCP
joint
subluxation.
We have

discussed the risks and benefits of proceeding with surgery, and given his medical history and lack of caregiver support to recover postoperatively, I would not recommend

surgical
intervention at
this time. He is
interested in a
second
opinion, and
we will place a
referral for this
for him today.

Exhibit A, pages 5-6

11. Following another
visit, on July 5, 2019, Dr.
[REDACTED] wrote in part:

[Petitioner] has been previously evaluated in this clinic for consideration of surgical correction of this. However, given his lack of caregiver support and medical comorbidities,

we have felt that he is not a safe candidate for any surgical intervention and have counseled him towards the nonoperative measures.

He specifically was initially considered for

surgery in
March earlier
this year with a
stipulation that
he would have
safe medical
clearance for
the procedure
and
demonstrate
sufficient
caregiver
support.
However,

neither one of those were fulfilled and we have opted to defer offering him surgical intervention as I feel that the risk of a procedure outweighs any benefits. He presents today for further

discussion of
this.

I had an
opportunity to
discuss with
him again that
given his
recent
hospitalizations
and his other
medical
comorbidities, I
do not feel that

he is a safe candidate for surgical intervention and would not recommend any surgery at this time. He has been frustrated in our discussions and reports that he does not feel

comfortable
with this plan. I
have offered
him
recommendatio
ns for other
surgeons for
whom he could
be evaluated
for
consideration
of surgery and
we will provide
these for him

today. It was my pleasure to see him today and he will follow up on an as-needed basis.

Exhibit A, pages 6-7

12. On August 18, 2020, Dr. [REDACTED] completed his review of the request for Respondent and wrote in part:

I contacted
[Petitioner] at
2:20 PM today,
8/18/20. His
request is
documented
elsewhere but
basically he did
not want to
follow up
locally with Dr.
[REDACTED],
was declined
by Dr. [REDACTED]

in Gaylord, 3
different
physicians in
the Ann Arbor
area. We have
notes from the
U of M hand
surgeon who
felt that he
would not
benefit and that
he was a poor
surgical
candidate

because of his
other
comorbidities.

[Petitioner] tells
me that
University of
Michigan
orthopedic
surgery and
that St. Joseph
hand surgery
physicians
declined to do
his surgery.

We do not have notes from them as they made the decision based on the notes of Dr. [REDACTED] of U of M hand surgery.

[Petitioner]

repeats again today that Mayo Clinic in Florida was

willing to do the surgery but DHSS [sic] was not willing to pay for his transportation and stay in Florida. He did not have a face-to-face evaluation there. We have not received notes

from Dr.
Hansen in
[REDACTED] yet
although we
have asked for
expedited
return. I have
reviewed the
note from Dr.
[REDACTED]
from Spectrum
health
orthopedic
surgery, who

recommended
the hand
surgery. I did
not see any
comment on
likelihood of
benefit for pain
or function.

I did offer to try
to obtain a
hand surgery
second opinion
locally with a

hand surgeon
other than Dr.
[REDACTED] [REDACTED].
He declines
and states that
he intends to
have the
surgery done
on September
15 at Spectrum
and will appeal
the IDT
decision. He
acknowledges

today that he
was told prior
to enrollment
that he would
need to work
within PACE
North
contracted
physician
network and
was given a list
of the
contracted
providers. I

have notified
our Center
Director that he
wishes to
appeal.

Exhibit A, page 11

13. On August 19, 2020,
Respondent sent
Petitioner a written
notice stating that his
request for hand surgery
had been denied.
(Testimony of Petitioner;

Testimony of
Respondent's
representative).

14. With respect to
reason for the denial,
the notice stated that a
minimum of four
different doctors had
declined to perform the
requested surgery on
the basis that there
would be no benefit and
Petitioner was not a

good surgical candidate.
(Testimony of
Respondent's
representative).

15. Petitioner then
appealed that denial
locally with PACE North.
(Testimony of
Petitioner).

16. On September 4,
2020, a new doctor at
Respondent, Dr. [REDACTED]
[REDACTED], M.D., met

with Petitioner regarding the request for hand surgery. (Exhibit A, pages 12-13).

17. At that time, Dr. [REDACTED] determined that he needed to review Petitioner's records and charts in order to determine Petitioner's surgical risk and provide clearance. (Exhibit A, page 13).

18. Following his review, Dr. [REDACTED] advised Petitioner that he would not overturn the earlier denial. (Exhibit A, page 17).

19. On September 9, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this

matter regarding the denial of his request for hand surgery. (Exhibit #1, pages 1-10).

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

*MPM, July 1, 2020 version
PACE Chapter, pages 1-2*

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only

Respondent's denial of Petitioner's request for hand surgery that is at issue.

In support of Respondent's decision, Respondent's Center Manager testified regarding the course of Petitioner's case with Respondent, including the fact that Petitioner already had hand surgery scheduled with a non-network provider at the time he enrolled in

PACE and that, while Respondent is still pursuing potential hand surgery for Petitioner, the request for hand surgery had to be denied due to a lack of medical necessity. Respondent's representative also read the language of the denial into the record, with the notice stating that the request was denied because a minimum of four different doctors had declined to

perform the requested surgery on the basis that there would be no benefit and Petitioner was not a good surgical candidate.

In response, Petitioner testified that he had the surgery all set up, with just one trip for the surgery and physical therapy with PACE, but that Dr. [REDACTED] did not want to pay for Petitioner having the surgery in Grand

Rapids, Michigan. He also testified that Dr. [REDACTED] never even looked at Petitioner's x-rays or medical documentation, and that four doctors have okayed the surgery, with one changing her mind because of Petitioner's supports at home. Petitioner further testified that the doctor who changed her mind did so days before the surgery was scheduled to be performed

and that it was just because Petitioner did not bring a home health aide with him to the appointment. Petitioner also specifically identified medical providers, including the Mayo Clinic in Florida and Spectrum in Grand Rapids, Michigan, who were ready to perform the surgery.

Petitioner bears the burden of proving by a preponderance of the

evidence that Respondent erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the decision in light of the information that was available at the time the decision was made.

Given the record in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must therefore be affirmed. The

relevant notice in this case provided that Petitioner's request for hand surgery was denied for medical reasons and on the basis that Petitioner was not good surgical candidate and/or would not benefit from the procedure; and the exhibit in this case documents multiple doctors finding so and their reasoning for doing so. Moreover, while Petitioner credibly testified that there

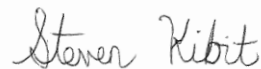
are doctors who have approved the surgery, there is nothing in the record regarding the reasoning of those doctors; what, if any, examinations they completed; or why they disagreed with other medical professionals. Accordingly, based on what is in the record in this case, Petitioner has failed to meet his burden of proof and Respondent's decision must be affirmed.

DECISION AND ORDER

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

**IT IS, THEREFORE,
ORDERED** that:

Respondent's decision is
AFFIRMED.



Steven Kibit

SK/sb

Steven Kibit
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED],
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[REDACTED]

**Community
Health Rep**

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