

## 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 REDACTED 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. Mark Jackson, M.D., spoke with Petitioner. (Exhibit A, page 2).
5. Dr. Jackson then

documented  
following:

the

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 Amy Leigh Holland wrote that Petitioner visited with her and Dr. Jennifer Filip Waljee, 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. Waljee  
wrote in part:

[Petitioner] is a  
REDACTEDye  
ar-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.

**REDACTED**

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 REDACTED 2019, Dr. Waljee 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. Jackson 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. Mark  
Leslie, was  
declined by Dr.  
Hanson 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. Waljee 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 Gaylord yet although we have asked for expedited

return. I have reviewed the note from Dr. Levi Hinkleman 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. Mark Leslie. He declines and states that he intends to have the surgery done on REDACTED 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 REDACTED, 2020, a new doctor at Respondent, Dr. Mark S. Byland, M.D., met with Petitioner regarding the request for hand surgery. (Exhibit A, pages 12-13).

17. At that time, Dr.

Byland 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. Byland 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. Jackson did not want to pay for Petitioner having the surgery in Grand Rapids, Michigan. He also testified that Dr. Jackson 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.**