

## **ISSUE**

Did Respondent properly deny Petitioner's request for additional transportation miles and properly authorize Petitioner's Home Care hours 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. PACE North is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS or Department) and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony).
2. Petitioner is a REDACTEDyear-old legally blind male, born REDACTED 1946, who has been receiving services through PACE. (Exhibit A, p 2; Testimony).
3. On January 6, 2021, Petitioner requested that PACE provide 50 miles per week of transportation for errands so that home care staff could assist Petitioner with filing paperwork with the REDACTED Court system. At the time, Petitioner was authorized to receive 30 miles per week of transportation for errands.<sup>1</sup> (Exhibit A, pp 1-2; Testimony)
4. PACE completed an assessment of Petitioner's request on January 6, 2021 and the assessment was reviewed by the Inter-Disciplinary Team (IDT) on January 7, 2021. Upon review, the IDT denied the request for increased transportation because it was determined that the request was not related to the health and/or safety of Petitioner, as required by policy. (Exhibit A, pp 2-3; Testimony)
5. On January 11, 2021, PACE provided Petitioner with an Adequate Action Notice, Denial of Service explaining the denial and providing Petitioner his appeal rights. (Exhibit A, pp 4-12; Testimony)
6. On January 11, 2021, Petitioner requested an internal appeal, which was escalated to an expedited internal appeal on January 26, 2021. (Exhibit A, pp 13-20; Testimony).
7. On January 28, 2021, the internal appeal committee upheld the denial. (Exhibit A, pp 21-28; Testimony).
8. On January 14, 2021, Petitioner requested that PACE provide him with 20 hours of home care weekly, an increase of 12 hours weekly from the prior authorization, to assist Petitioner during recovery from surgery on his left

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<sup>1</sup> All of Petitioner's medical transportation is covered separately by PACE.

hand. (Exhibit A, pp 29-30; Testimony)

9. On January 15, 2021, an assessment of the request was completed by a PACE nurse. A five-day extension was taken to ensure that the nurse could gather the necessary information regarding Petitioner's post-surgical needs. (Exhibit A, pp 29-30; Testimony)
10. On January 18, 2021, following a review of the nurse's assessment, the IDT determined that 2 additional hours of home care would be approved daily for seven days following Petitioner's surgery and until a follow-up appointment scheduled with Petitioner's doctor on February 1, 2021. (Exhibit A, pp 29-30; Testimony)
11. On January 25, 2021, Petitioner requested an expedited internal appeal. (Exhibit A, pp 31-46; Testimony)
12. On January 27, 2021, PACE's internal appeal committee met with Petitioner and determined that Petitioner's home care hours would be temporarily increased to 14 hours per week. (Exhibit A, pp 47-54; Testimony)
13. On February 9, 2021, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules.

## **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  
January 1, 2021, pp 1-2, 6*

Here, Petitioner requested an increase in transportation miles from 30 miles per week to 50 miles per week for errands as well as an increase in home care hours from 8 hours per week to 20 hours per week.

With regard to the miles, Petitioner testified that he discovered during this request that he actually had been approved for 30 miles per week since he joined PACE in August 2020 although he had been told it was only 30 miles per month. Petitioner suggested that he should be able to bank and use the miles from the past that he had not used. However, Petitioner admitted that when he requested the additional miles in January 2021 it was to assist with filing paperwork in REDACTED County court. Petitioner indicated that this court matter has been resolved, but he would still like additional miles each month to assist with other errands around the house.

With regard to the home care hours, Petitioner testified that he now needs additional hours to assist him with the use of an ultrasound machine and a TENS unit he purchased on his own to help with his rehabilitation following the surgery on his hand.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying his request for an increase in transportation miles and home care hours. Based on the evidence presented, this Administrative Law Judge finds that Petitioner has failed to meet this burden of proof. Here, Petitioner admits that the additional miles he requested originally related to a court case in REDACTED County. PACE properly reviewed this request and determined that the request did not involve Petitioner's health or safety, so that request was properly denied. The undersigned can only consider the original request made and the decision made by PACE at that time, based on the available information. Clearly, transportation for a court case would not involve Petitioner's health and/or safety so that request was properly denied.

With regard to the request for additional home care hours, PACE conducted a thorough assessment of Petitioner's needs post-surgery and properly authorized an additional 2 hours per day of home care, for a total of 10 hours of home care per day. This amount was then increased to 14 hours of home care per day following the internal appeal. PACE

properly based this determination on the PACE nurse's assessment and the clinical documentation from Petitioner's surgery. PACE also noted that Petitioner comes into the PACE agency each Monday and Wednesday and receives a shower at that time. Petitioner has failed to provide any evidence that any additional hours of home care medically necessary.

Petitioner also relied on several authorities outside the scope of this hearing and the authority of this Administrative Law Judge, such as the Public Health Code and the Americans with Disability Act.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to meet the burden of proof and that Respondent properly denied Petitioner's request for increased transportation miles and properly authorized a partial increase in Petitioner's home care hours following his hand surgery.

### **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 increased transportation miles and properly authorized a partial increase in Petitioner's home care hours following his hand surgery.

**IT IS THEREFORE ORDERED** that:

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