

## ISSUE

Did Respondent properly deny Petitioner's request for additional homecare 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. 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 REDACTED year-old Medicaid beneficiary who has been diagnosed with, among other conditions, dementia with behavioral disturbance; a history of falls; an impaired memory; hypertension; hyperlipidemia; and major depressive disorder. (Exhibit #1, page 8; Exhibit D, pages 3, 8-10, 18-19).
3. She lives with her son and son-in-law, both of whom work full-time. (Exhibit D, page 13; Testimony of Petitioner's representative).
4. Since REDACTED of 2020, Petitioner has been enrolled in and receiving services through Respondent. (Exhibit D, page 4).
5. In part, she was authorized for 20 hour per week of homecare services, which she used 4 hours per day, 5 days per week. (Exhibit #1, page 9).
6. On or about REDACTED 2021, Petitioner was hospitalized after falling and fracturing her left arm. (Exhibit #1, page 11).
7. She also fell while in the hospital. (Exhibit #1, page 9).
8. Petitioner was subsequently transferred to a rehabilitation center. (Exhibit D, pages 4, 13).
9. While Petitioner was in the hospital or a rehabilitation facility, her representative requested an increase in her homecare services. (Exhibit #1, page 16; Exhibit E, page 2).
10. Specifically, Petitioner requested an increase to 11 hours per day, 5 days per week. (Exhibit E, page 16).
11. Such an increase would ensure that Petitioner always had someone with her between Petitioner's natural supports and her services through Respondent. (Exhibit E, page 16; Testimony of Petitioner's representative).

12. On February 10, 2021, Respondent sent Petitioner written notice that Petitioner's request for 11 additional homecare hours a day had been denied. (Exhibit C, pages 1-2).
13. With respect to the reason for the denial, the notice stated that Respondent "has denied this request due to participant plans for Day Center attendance and additional accommodations." (Exhibit C, page 1).
14. The notice also provided that Respondent recommended that: "Participant regularly attends Huron Valley PACE Day Center 4 days per week, PACE will provide a bedside commode, bed alarm, and modify homecare for 2 hours in the morning and 2 hours in the evening." (Exhibit C, page 1).
15. On February 11, 2021, Petitioner was discharged from the rehabilitation facility. (Exhibit #1, page 8; Exhibit E, page 21).
16. At the time of her discharge, the facility recommended that Petitioner receive care and supervision 24 hours a day, 7 days a week. (Exhibit #1, pages 9-11).
17. In her home, Petitioner's services through Respondent were reduced to 16 hours per week. (Testimony of Petitioner's representative).
18. Petitioner did begin attending Respondent's day center. (Exhibit D, page 9).
19. On April 5, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter. (Exhibit #1, pages 1-61).

### *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:

#### **SECTION 1 – GENERAL INFORMATION**

*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, October 1, 2020 version  
PACE Chapter, pages 1-2  
(italics added for emphasis)*

Here, Petitioner has been approved for homecare services at all times relevant to this matter and it is only the amount of those services at issue, with Petitioner requesting an increase to 55 hours per week (11 hours per day, 5 days per week) and Respondent instead approving 4 days per week at Respondent's Day Center to go along with the previously approved homecare hours.

In appealing, 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 Respondent's decision in light of the information it had at the time it made the decision.

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has met her burden of proving that Respondent erred and that Respondent's decision must therefore be reversed.

As an initial matter, the undersigned Administrative Law Judge would note that, while Respondent identified Petitioner as seeking an additional 11 hours of homecare a day in the notice of denial and during the hearing, the record instead reflects that Petitioner only sought an additional 7 hours per day, 5 days a week, of such services. And, while it does not appear that Respondent's decision would be different had it correctly identified Petitioner's request, Respondent therefore erred in even identifying Petitioner's request.

More significantly, Respondent also erred while implementing its decision as, whatever Respondent's intention, it improperly reduced Petitioner's homecare services without advance notice or justification. Respondent's witnesses credibly testified that, along with the 4 days per week at Respondent's Day Center, Petitioner was to continue receiving the previously approved 20 hours of homecare services. However, Petitioner's representative also credibly testified that Petitioner's homecare hours were subsequently reduced to 16 hours per week and the Adequate Action Notice sent by Respondent appears to call for such a reduction, with the notice specifically stating that Petitioner will attend the Day Center 4 days per week, with 4 hours of homecare on those days. Nothing in the notice addresses any other days of the week and, consequently, it appears that only 16 hours per week of homecare services were to be authorized.

Additionally, even if Respondent had properly implemented its decision and approved 20 hours per week of homecare services to go along with the 4 days per week at its Day Center, Petitioner has still met her burden of proving that Respondent erred in authorizing those services. Petitioner requested additional services to ensure that, as recommended when she was discharged to home, Petitioner, who has dementia and is a significant fall risk, would have someone to supervise her around-the-clock between her natural supports and paid services. Respondent does not appear to dispute those needs, but it also did not authorize services in a sufficient amount. For example, both Petitioner's son and her son-in-law work full time and, even if the son-in-law was working from home, there would be no one with Petitioner on the weekday when she did not go into the Day Center.

Respondent indicated during the hearing that it would be willing to approve 5 days per week at the Day Center, but the undersigned Administrative Law Judge is limited to reviewing the decision before him and that decision only included 4 days per week at the Day Center. Accordingly, even if Respondent was correct in approving Day Center attendance as opposed to in-home services, Respondent still erred; its decision must be reversed; and it must initiate a reassessment of Petitioner's services in light of Petitioner's request, needs, and any subsequent change in circumstances.

#### *DECISION AND ORDER*

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

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

Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's services.