



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: December 2, 2021
MOAHR Docket No.: 21-004452
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 4, 2021, from Lansing, Michigan. The Petitioner was represented by David Carrier, Attorney. Sara Calabrese, Medicaid Supervisor, and Alex Mata, Medicaid Paralegal, appeared as witnesses for Petitioner. The Department of Health and Human Services (Department) was represented by Geraldine Brown, Assistant Attorney General (AAG). Emily Camp, Assistance Payments Supervisor, and Bridget Heffron, Medicaid Eligibility Policy Specialist for SSI Related Medicaid Programs, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-25. Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-55.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medicaid (MA)?

FINDINGS OF FACT

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

1. On May 24, 2021, the Care Resources Program of All-Inclusive Care for the Elderly (PACE) program assessed Petitioner and determined he met the Michigan Medicaid Nursing Facility Level of Care Determination Criteria (NFLOC). (Exhibit 1, p. 19)

2. On May 27, 2021 the PACE Agency wrote a letter to the Department advising them that Petitioner met the NFLOC on May 24, 2021 and requested that the Department use that date as the snapshot date for long term care. (Exhibit 1, p. 19)
3. On [REDACTED] 2021, an application for Health Care Coverage was filed on Petitioner's behalf. Petitioner requested to be considered for the PACE program. (Exhibit A, pp. 6-17)
4. On July 8, 2021, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was denied effective June 1, 2021 and ongoing because the value of Petitioner's countable assets was higher than allowed for this program. The Department utilized the traditional Medicaid rules. The Department did not apply the special eligibility rules for the PACE program in making this determination because the Initial Asset Assessment (IAA) could not be approved within 30 days of the PACE assessment date. (Exhibit A, pp. 2 and 20-22; Exhibit 1, pp. 21-23)
5. On July 9, 2021, Petitioner was re-assessed by the PACE program and the PACE Agency wrote a letter to the Department advising them that Petitioner met the NFLOC the same date and requested that the Department use that date as the snapshot date for long term care. (Exhibit 1, p. 24)
6. On July 20, 2021, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was approved effective July 1, 2021 and ongoing with a monthly deductible of \$2,187.00. (Exhibit 1, pp. 26-29)
7. On September 15, 2021, a hearing request was filed on Petitioner's behalf contesting the Department's determination. (Exhibit A, pp. 4-5; Exhibit 1, pp. 10-11)

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

BEM 402 addresses special MA asset rules, including rules pertaining to eligibility for the PACE program:

SSI-Related MA Only

Use this item to determine asset eligibility for the first period of continuous care (see definitions in this item) that began on or after 9- 30-89 when an L/H, PACE, or waiver client:

- Has a community spouse (see below), and
- A presumed asset eligible period has not yet been established, or
- If established, the presumed asset eligible period has not ended; see presumed asset eligible period in this item.

Use BEM 400 to determine asset eligibility for clients who do not meet the above conditions; see EXHIBIT II.

Example: Mary entered LTC on 5-3-03 and applied on 5-5-03. Frank, her spouse, stated he had been in the hospital for more than 30 days back in June and July 2001, but Mary has not been in a hospital or LTC for 30 days or more. The initial asset assessment date would be 5-3-03.

Example: Anthony enters LTC on 4-6-03. His wife Joann applies for him on 4-18-03 and states that he had been in the hospital for 17 days and then LTC for the next 20 days beginning 12-12-99, but she had been in LTC for more than 30 days in July in 1999. The initial asset assessment date would be 12-12-99.

The continuous period of care applies to the L/H client who is applying, not the spouse who was hospitalized or in LTC first.

BEM 402, April 1, 2021, pp. 1-2

Continuous period of care - A period of at least 30 consecutive days where the institutionalized spouse/applicant has been, or is expected to be:

- In a hospital, and/or
- In an LTC facility, and/or
- Approved for the waiver as defined in BEM 106.

- Approved for PACE as defined in BEM 167.

The period is no longer continuous when none of the above is true for 30 or more consecutive days.

Example: Institutionalized spouse/applicant is in the hospital for 10 days, returned home for 5 days and then entered LTC. Because the applicant was not out of the hospital for 30 days or more, the continuous period of care begins with the hospital admission date.

Waiver - Provides home and community-based services to persons who, if they did **not** receive such services, would require nursing home care. The waiver is administered by the Michigan Department of Health and Human Services (MDHHS) through contracts with Pre-Paid Ambulatory Health Plans; see BEM 106.

BEM 402, April 1, 2021, p. 3
(Underline added by ALJ)

INITIAL ASSET ASSESSMENT

MA Only

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse.

An initial asset assessment means determining the couple's (applicant's, spouse's, joint) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989.

Example: A married man entered a nursing home on 12/6/89. He was released on 6/10/90 and returned home.

On 3/16/91 he re-entered the nursing home and has been there continuously ever since.

He applied for MA on 10/2/91. To determine his asset eligibility, do an initial asset assessment for 12/6/89 - the first day of the first continuous period of care that began on or after September 30, 1989.

Example: A married woman is approved for the waiver on 6-2-93. She is hospitalized from 6-10-93 until 6-30-93 when

she returns home and again receives care management and waiver services.

She applies for MA on 8-24-94. To determine her asset eligibility, do an initial asset assessment for 6-2-93, the first day of the first continuous period of care that began on or after September 30, 1989.

BEM 402, April 1, 2021, p. 7

Standard of Promptness

MA Only

Complete an initial asset assessment and mail notices within 45 days. The period begins on the date the local office receives the signed DHS-4574-B.

BEM 402, April 1, 2021, p. 8

BEM 167 addresses the PACE program, including determining the IAA date:

Initial Asset Assessment (IAA) Date

The special MA asset rules in BEM 402 apply when completing the *initial asset assessment*.

The date of the medical assessment and approval for PACE enrollment is completed by the PACE agency is the first day of continuous care for the purpose of determining the IAA; unless there is a previous period of care which meets the definition of a first day of continuous care found in BEM 402.

Approval means the participant expects to receive appropriate waiver services for at least 30 consecutive days.

BEM 167, October 1, 2020, p. 2
(Underline added by ALJ)

In this case, the Department explained that they did not apply the special MA asset rules found in BEM 402 for an applicant that has been or is expected to be approved for the PACE program because PACE services could not start within 30 days of the assessment date. The Department explained that PACE approvals are always prospective and start on the first of the month. Further, the card cutoff date is the 24th of the month prior to the anticipated start of PACE services. Accordingly, if everything

needed for the eligibility determination is not completed by the 24th of the month, PACE services cannot start on the first of the following month. Therefore, regular Medicaid rules would be applied to determine eligibility for that month. In effect, the Department asserted that PACE services must start within 30 days of the medical assessment date, otherwise that assessment cannot be used as the first day of continuous care for the IAA date. (Exhibit A, pp. 2 and 23; Testimony of Assistance Payments Supervisor and Medicaid Eligibility Policy Specialist for SSI Related Medicaid Programs)

Under the Department's interpretation of the policy, PACE agencies would be limited for when they could complete a medical assessment for an individual requesting to participate in the PACE program. For example, in this case, the assessment completed for Petitioner on May 24, 2021 could not have been used to start PACE services for June 2021. It is highly unlikely that a Medicaid application and all needed information could be submitted to the Department and approved that same day. Further, any medical assessments completed after the 24th of a month could not be used to start PACE services because the card cutoff date would have already passed for the only month that would start with 30 days of when the assessment was completed. It is also noted that pursuant to the above cited BEM 402 policy, the standard of promptness for an IAA is 45 days from when the local office receives a signed DHS-4574-B Assets Declaration. BEM 402, April 1, 2021, p. 8. Accordingly, the Department's standard of promptness is longer than the 30 days they are asserting is allowed for the anticipated start of PACE services.

In effect, the PACE agency would be limited to completing the medical assessment to as close to the beginning of a month as possible and hoping that the Department completes the IAA well before the end of the 45-day standard of promptness allowed by policy. Otherwise, the PACE agency would have to re-assess the individual and a new MA application would have to be submitted. This would further delay the possible start of needed PACE services to the beginning of the month following the re-assessment date.

The Department witnesses were unable to cite any BEM or BAM policy stating that the PACE services must commence within 30 days of the medical assessment date. The Assistance Payments Supervisor and Medicaid Eligibility Policy Specialist for SSI Related Medicaid Programs indicated the Department utilized BEM 402 and BEM 167 in making the eligibility determination in this case. (Testimony of Assistance Payments Supervisor and Medicaid Eligibility Policy Specialist for SSI Related Medicaid Programs) As cited above, BEM 402 states that a continuous period of care includes a period of at least 30 consecutive days where the individual has been or is expected to be approved for PACE as defined in BEM 167. BEM 402, April 1, 2021, p. 3. Pursuant to BEM 167, unless there is a previous period of care which meets another definition of a first day of continuous care found in BEM 402, the date of the medical assessment and approval for PACE enrollment, as completed by the PACE agency, is the first day of continuous care for the purpose of determining the IAA. Approval means the participant expects to receive appropriate waiver services for at least 30 consecutive days. BEM 167, October 1, 2020, p. 2. The Department's policy, as written, does not contain a requirement that

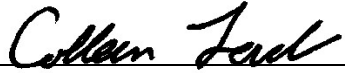
the anticipated PACE services must commence within 30 days of the medical assessment completed by the PACE agency. Rather, as written, the policy requirement is an expected need for PACE services for at least 30 consecutive days.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for Medicaid (MA).

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**. However, there is no further action for the Department to take because PACE enrollment is always prospective, and Petitioner has subsequently been approved for the PACE program.

CL/ml



Colleen Lack
Administrative Law Judge

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 30639
Lansing, Michigan 48909-8139

Via Electronic Mail:

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