

## **ISSUE**

Did Respondent properly deny Petitioner's request for placement in a facility?

## **FINDINGS OF FACT**

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

1. Department 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 a REDACTEDyear-old man, who suffers from dementia. (Exhibit A, pp 47-48; Testimony)
3. In March of 2021, Petitioner moved to Michigan from California. (Exhibit A, p 47; Testimony.)

4. On REDACTED, 2021, Petitioner enrolled with Department and was determined to be eligible for PACE services. (Testimony.)
5. On or around August 24, 2021, Petitioner's son requested Petitioner be placed in an assisted living facility. (Exhibit A, p 43; Testimony.)
6. As of July 15, 2021, Petitioner resided with his son and daughter-in-law. (Exhibit A, p 9; Testimony.)
7. On July 15, 2021, PACE agreed to have Petitioner placed in a Respite facility while Petitioner's son and daughter-in-law went on vacation. (Exhibit A, p 9; Testimony.)
8. On REDACTED 2021, Petitioner had a breakdown while touring a senior care facility. Police were involved and Petitioner was taken to Providence Hospital. (Exhibit A, pp 9, 16-21; Testimony.)
9. Following the REDACTED 2021, incident, all parties agreed to have Petitioner placed in a temporary Respite facility, proceed with DICE while awaiting a psychiatric assessment and behavioral therapy interventions. (Exhibit A, p 10; Testimony.)
10. On or around August 24, 2021, the Department indicated Petitioner would be transitioned to the family home. Petitioner's family objected and requested Petitioner be placed in a facility.
11. On August 25, 2021, the Department issued an Adequate Action Notice. The notice indicated the Petitioner's request for placement was denied and further recommended an extension of respite, and additional neuropsychological assessments. (Exhibit A, p 7; Testimony.)
12. On October 4, 2021, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.

### 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 federal 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

### **SECTION 3 - ELIGIBILITY AND ENROLLMENT**

#### **3.1 ELIGIBILITY REQUIREMENTS**

To be eligible for PACE enrollment, applicants must meet the following requirements:

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Health and Human Services (MDHHS).)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.
- Receive a comprehensive assessment of participant needs by an interdisciplinary team.
- A determination of functional/medical eligibility based upon the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online within fourteen (14) calendar days from the date of enrollment into the PACE organization.
- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.
- Not concurrently enrolled in the MI Choice program.
- Not concurrently enrolled in an HMO.<sup>1</sup>

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only the denial of a particular service in dispute, with Petitioner

<sup>1</sup> Medicaid Provider Manual, PACE, April 1, 2021, pp 1-3.

requesting placement in a facility and Department denying the request on the basis that other services can meet Petitioner's needs.

The record presented does not clearly define what specific type of placement is being sought. The Petitioner's request for hearing indicates a "facility Pace has a contract with". The Negative action notice indicates "placement." Regardless, PACE is required per the MPM and CFR 460.112, to provide "necessary care in all settings, up to and including placement in a long-term care facility when the PACE organization can no longer provide the services necessary to maintain the participant safely in the community."<sup>2</sup> Furthermore, PACE is required to provide enrolled beneficiaries with all Medicare and Medicaid covered services.<sup>3</sup> Additionally, placement in a foster home, assisted living facility, nursing home, etc., are not enumerated as excluded services,<sup>4</sup> and PACE as a an organization is "responsible for providing care that meets the needs of each participant across all care settings, 24 hours a day, every day of the year...services must be furnished in at least the PACE center, the home, and inpatient facilities."<sup>5</sup> Based on these policies, PACE cannot deny services simply because the Petitioner requires services in a facility.

Specifically in this case, the Petitioner was seeking some type of placement due to the Petitioner's combativeness when there were attempts to return him to the Legal Guardian's home and because the Petitioner wanted to be in a facility. Although the Petitioner has specific requests, the Petitioner was deemed to lack the capacity to make those decisions himself<sup>6</sup>. Therefore, the specific requests of the Petitioner, for the most part, are moot points. However, the Petitioner's combative nature cannot be ignored. Although the record points to one specific incident, the testimony of the Petitioner's guardian hinted at other incidents as well. Based on the response of the Department's witnesses, it appeared that they were not aware of some of these other incidents and therefore should be something worth investigating moving forward.

The Department indicated the placement would be denied and that continued respite and assessments should take place to determine how things should progress. These actions seem to be adequate in nature to address the Petitioner's current symptoms and unwillingness to return to the legal guardian's home. Under most circumstances, I would probably find this to be sufficient and would therefore affirm the Department's actions. However, it appears there is some confusion as to what is specifically being requested and some confusion as to what benefits PACE can/should provide. Additionally troubling, is that Petitioner doesn't have a true residence or home as he recently relocated to Michigan after spending 30 plus years in California. This being the case, I find sufficient evidence to reverse the Department's actions and order the Department to reassess the Petitioner for a facility placement.

<sup>2</sup> 42 CFR §460.112(c)(4).

<sup>3</sup> 42 CFR §460.92.

<sup>4</sup> 42 CFR §460.96.

<sup>5</sup> 42 CFR §460.98.

<sup>6</sup> On September 16, 2021, the Oakland County Probate Court deemed Petitioner to be legally incapacitated and appointed REDACTED as Petitioner's legal guardian. See Exhibit A, p 13.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Department improperly denied Petitioner's request for placement in an assisted living facility.

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

Department's decision is REVERSED.

The Department is ordered to perform a new assessment to determine Petitioner's eligibility for placement.