

## **ISSUE**

Did Respondent properly deny Petitioner's request for dentures?

## **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 a REDACTED year-old Medicaid beneficiary who has been enrolled in PACE and receiving services through Respondent. (Exhibit A, pages 17-18).
3. He lives in a facility and all his care needs, including dietary needs, are to be met there. (Exhibit A, page 17).

4. As part of his services through Respondent, Petitioner received dentures on REDACTED 2019. (Exhibit A, page 10).
5. However, Petitioner lost those dentures in January 2021. (Exhibit A, page 10).
6. Respondent then approved a second pair of dentures in July 2021, but Petitioner reported losing those dentures as well in December 2021. (Exhibit A, page 10).
7. Both instances of Petitioner losing his dentures occurred while Petitioner was eating most of his meals in his room due to the ongoing COVID-19 pandemic. (Exhibit A, page 5).
8. Petitioner's weight decreased a little while having dentures between July 2021 and December 2021. (Exhibit A, page 17).
9. On February 14, 2022, Petitioner requested a third pair of dentures through Respondent, stating that the lack of dentures was limiting his food intake. (Exhibit A, pages 8, 11).
10. That same day, a social worker with Respondent performed a Patient Healthcare Questionnaire (PHQ) for depression, finding that Petitioner's score had increased from 2 to 5 since an earlier questionnaire was completed on December 7, 2021. (Exhibit A, page 5).
11. A registered dietitian (RD) also performed an assessment, finding that Petitioner had a history of malnutrition, but no significant weight loss since losing his dentures. (Exhibit A, pages 10-11).
12. As a recommendation, the RD stated:

Participant can find a variety of foods to eat at the 3 dining options at his facility that he can eat. His weight loss since the dentures were lost is an insignificant amount and still above his goal of maintaining his weight above REDACTED To prevent further weight loss, increasing to 2 servings of nutrition supplements per day would be an alternative to providing a 3rd set of dentures that have a good chance of being lost again. He prefers this nutritional supplement to others he has tried in the past that were nutrient dense.

*Exhibit A, page 11*

13. On February 17, 2022, Respondent's interdisciplinary team (IDT) met to review Petitioner's request for new dentures. (Exhibit A, pages 5-7).

14. During the review, it was noted that Petitioner reported that he was very sorry that he had lost two sets of dentures previously and that he had no idea how he could prevent losing a third pair if approved. (Exhibit A, page 5).
15. It was also noted that Petitioner had been drinking supplements to keep his weight up. (Exhibit A, page 5).
16. It was further noted that Petitioner's depression had increased, but that it was still minimal. (Exhibit A, page 5).
17. Following its review, Respondent's IDT determined that the request should be denied, noting that:

[Petitioner] has not had significant weight loss without the use of his dentures and his depression has not increased a lot due to [Petitioner] missing his dentures. IDT denies the request to provide a 3rd pair of dentures. To help [Petitioner] maintain his weight, RD will add a second supplement that [Petitioner] has been drinking and enjoys.

*Exhibit A, page 5*

18. On February 17, 2022, Respondent also sent Petitioner an Adequate Action Notice stating that his request for dentures had been denied. (Exhibit A, pages 19-20).
19. With respect to the reason for the action, the notice stated:

**Reason for denial: As you have not had significant weight loss without the use of your dentures and your depression has not increased a lot due to you missing your dentures, IDT denies the request to provide a 3<sup>rd</sup> pair of dentures. To help you maintain your weight, RD will add a second supplement that you have been drinking and enjoys [sic]. PACE social work will continue to monitor your mental health and assess for needed supports. Family will be educated on the option to use a non-contracted dentist and setup a payment plan if they choose to do so.**

*Exhibit A, page 19*

20. On March 1, 2022, Petitioner filed an Internal Appeal with Respondent regarding the decision to deny his request for dentures. (Exhibit A, pages 3-4).

21. In that appeal, Petitioner's representative at the time stated in part:

Having dentures is not just a luxury to him; it is an absolute necessity. Without dentures, his diet is completely altered. Not only does he have to eat food that is soft enough to bite into with only his gums, it has to be soft enough to chew. Just to eat a salad is a challenge. It is also very painful for him to eat because no matter what food it is, you have to chew it a little — and without teeth, it causes his gums to become irritated and painful.

Wanting to have a nice smile sounds like just a cosmetic "want", however it goes much deeper, it affects his self-esteem without dentures. He is embarrassed to go out in public or to talk in general as it is extremely difficult to understand him without teeth. This causes his paranoia, anxiety, and depression to intensify.

*Exhibit A, page 3*

22. On March 31, 2022, Respondent sent Petitioner written notice that his Internal Appeal was denied. (Exhibit A, pages 22-23).
23. With respect to the reason for the denial, the notice stated:

The PACE team RD & LMSW conducted thorough assessments — it was determined that there has not been significant weight loss since he misplaced his dentures nor has there been a significant decline in his mental health. As this is a request for a 3rd replacement set of dentures, there is a high risk of him losing them again. I feel the plan in place that includes the RD adding a second supplement daily —a supplement that [Petitioner] drinks and enjoys — and the PACE social workers will continue to monitor [Petitioner's] mental health and assess for needed supports is appropriate — providing another replacement set of dentures would not necessarily improve or be necessary to maintain his overall health status.

*Exhibit A, page 22*

24. On April 19, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit #1, pages 1-7).

25. Along with the Request for Hearing, Petitioner included the letter his representative at the time wrote as part of the Internal Appeal. (Exhibit #1, pages 5, 7).

### **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 eligibility for it, 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 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 ...

*MPM, January 1, 2022 version  
PACE Chapter, pages 1-2 (italics  
added for emphasis)*

Here, Respondent denied Petitioner's request for a third set of dentures pursuant to the above policy and on the basis that another pair of dentures was not medically necessary.

In appealing that decision, 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 available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must therefore be affirmed. Petitioner was previously approved for dentures through Respondent twice, but he lost both pairs; the earlier approvals alone do not establish that a third pair of dentures should be approved; and the remaining record fails to establish any medical necessity for dentures. For example, while Petitioner and his representative assert that Petitioner needs the dentures to eat a healthy diet, it is undisputed that he has not had any significant weight loss, with the minimal weight loss similar to what occurred when he had dentures; he is still above his goal weight; and Petitioner's nutritional needs can be met through the supplements provided by Respondent, the amount of which it has recently increased. Moreover, while Petitioner and his representative also assert that Petitioner needs the dentures for his mental health, including for his self-esteem, anxiety and depression, the record fails to establish anything more than a minor increase in Petitioner's depression and it is unclear if that minor increase is linked to dentures alone.

To the extent Petitioner's circumstances significantly change or he has additional or updated information to provide, he can always submit a new authorization request for dentures with that additional or updated information. With respect to the issue in this case, however, Respondent's decision must be affirmed given the available information and applicable policy.

#### 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 dentures.

**IT IS THEREFORE ORDERED** that:

Respondent's decision is **AFFIRMED**.