

ISSUE

Did Department properly reduce Petitioner's Home Care hours through the Program of All-Inclusive Care for the Elderly (PACE) and limit the hours-of-service delivery?

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) and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony).
2. Petitioner is a Medicaid beneficiary who has been receiving services through PACE. (Exhibit A; Testimony).
3. At all times relevant to this proceeding, Petitioner was wheelchair bound and suffered from mild neurocognitive disorders, stage 3 chronic renal failure, neurogenic bladder/incontinent, G.E.R.D., hypertension, type 2 diabetes, thoracic spinal lesions, major depression/anxiety, chronic skin breakdowns/ulcers, unsteady gait, arthritis, hearing impairment and a prior stroke. (Exhibit 1; Exhibit A; Testimony).
4. Petitioner lives at home with her husband who has his own medical issues and is able to provide limited informal support. (Exhibit 1; Exhibit A; Testimony).
5. On July 27, 2022, an Interdisciplinary Team (IDT), assessed Petitioner. The IDT determined Petitioner was totally dependent for meal prep, housework, medication management, shopping, transportation, bed mobility, transferring, locomotion and toileting; and required extensive assistance for dressing, bathing, and personal hygiene. The IDT also determined Petitioner had mild cognitive limitations with short term memory issues and required extra time and assistance to process and respond to questions. (Exhibit 1; Exhibit A; Testimony).
6. On August 10, 2022, following the assessment, the Department determined Petitioner was qualified and eligible to receive 24 hours per week of home care hours. (Exhibit 2; Exhibit A; Testimony).
7. On September 26, 2022, Department sent Petitioner an Advanced Action Notice. The notice indicated Petitioner's home care hours would be reduced from 24 hours per week to 15 hours per week. The notice went on to indicate the reasoning for the reduction was "[Petitioner's] current care needs are being met with less time." (Exhibit 3; Exhibit A; Testimony).
8. On September 30, 2022, Petitioner informed Department that an appeal would be filed. (Exhibit 3; Testimony).

9. On October 3, 2022, Department received a copy of Petitioner's appeal. (Exhibit 5; Testimony).
10. On October 10, 2022, Department sent Petitioner a second Advanced Action Notice. The notice indicated Petitioner would not receive care hours after 6 p.m. beginning October 7, 2022.¹ (Exhibit 6; Testimony).
11. On October 11, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR), received from Petitioner a request for hearing regarding the reduction in care hours. (Hearing File).
12. On October 18, 2022, Petitioner filed an internal appeal with Department appealing the denial of services after 6 p.m. (Exhibit 7; Testimony).
13. On October 26, 2022, the MOAHR, received from Petitioner, a second request for hearing regarding the prohibition of care hours after 6 p.m. (Hearing File).

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

¹ 3 days prior to the issuance date.

- 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

3.11 APPLICANT APPEALS

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.²

*Medicaid Provider Manual
Program of All-Inclusive Care for the Elderly Chapter
April 1, 2022, pp 1-2, 6*

In this case the Department reduced Petitioner's home care services and limited the hours of the day the Petitioner was able to receive those same services. The Department however did not provide any evidence to corroborate their reasoning or rationale behind either the reduction or the limitation. The testimony provided alluded to some type of agreement with Petitioner and Petitioner's family regarding the reduction and limitation. These very arguments though were rebutted by the simple fact the Petitioner not only appealed the actions but did so swiftly and promptly shortly after the decisions were made.

Additionally, in support of their position, the Department attempted to argue that Petitioner's needs were being met with fewer hours. The Department however did not offer any evidence to support these arguments. Tragically, the Department did not continue to provide the prior approved allocation as required per policy due to Petitioner's timely appeal and request for continued services³, and these actions may have played a role in Petitioner having to be hospitalized for a urinary tract infection and skin breakdowns.⁴

The evidence in this case points to the actions taken by the Department to be unsubstantiated, arbitrary and in violation of 42 CFR 460.4(b)(1-4). Consequently, I find Petitioner to have met their burden of proving by a preponderance of the evidence that the Department erred in reducing both her home care hours and in denying p.m. care.

² Medicaid Provider Manual, Program for All-Inclusive Care for the Elderly, April 1, 2022, pp 1-2, 6.

³ 42 CFR 460.122(e).

⁴ The reduction in services and limitation on service hours, left Petitioner in her bed for significantly long periods of time laying in her own feces and/or urine.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department improperly reduced Petitioner's Home Care hours and improperly denied Petitioner's request for p.m. care services.

IT IS THEREFORE ORDERED that:

The Department's decision is **REVERSED**.

The Department is further ordered to reinstate Petitioner's prior service allocation for home care services and to provide services in the p.m. if otherwise eligible and qualified.