

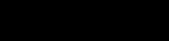


GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: 11/18/2022
MOAHR Docket No.: 22-004704
Agency No.: 0033794977
Petitioner: 

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on November 17, 2022. Petitioner appeared and testified on his own behalf. Alyssa Brandt, Quality Improvement Specialist, appeared on behalf of Respondent Senior Care Partners PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Kristin Rasmussen, registered nurse (RN), testified as a witness for Respondent.

During the hearing, the following exhibits were admitted into the record without objection:

- Exhibit A: Advance Action Notice
- Exhibit B: Face Sheet
- Exhibit C: Care Plan Detail Report
- Exhibit D: Service Summary Report
- Exhibit E: Summary of Case
- Exhibit F: Hearing Request
- Exhibit G: SDR Details

ISSUE

Did Respondent properly deny Petitioner's request for a Global Positioning System (GPS) Personal Emergency Response System (PERS) unit?

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 sixty-six (66) year-old Medicaid beneficiary who has been diagnosed with, among other conditions, nicotine dependence, obstructive sleep apnea, obesity, cervical disc degeneration, chronic pancreatitis, pain in right knee, pain in right shoulder, spondylosis in lumbar region, and diabetes. (Exhibit B, pages 1, 8-9).
3. He lives with his spouse in an apartment. (Exhibit B, page 3; Testimony of Petitioner).
4. Petitioner is also enrolled in PACE and receiving services through Respondent. (Exhibit B, page 1; Exhibit D, pages 1-3).
5. As part of his services, Petitioner was approved for a PERS unit for use in his apartment on the basis that he is a fall risk and that his wife cannot pick him up. (Testimony of RN).
6. Petitioner remains a fall risk, both inside and outside of his apartment. (Exhibit C, page 2)
7. On September 6, 2022, Petitioner requested a GPS PERS unit, which would work outside of his apartment, through Respondent. (Exhibit G, page 1).
8. A RN then assessed Petitioner in person. (Exhibit G, page 2).
9. During that assessment, the RN determined that, while Petitioner and Petitioner’s wife share a cell phone, they are rarely apart. (Exhibit G, page 2; Testimony of RN).
10. On September 9, 2022, Respondent sent Petitioner an Advance Action Notice stating that his request for a GPS PERS unit had been denied. (Exhibit A, pages 1-8).
11. With respect to the reason for the action, the notice stated: “There are other available options while out in public (others can call, carry a cell phone, etc.).” (Exhibit A, page 1).
12. Respondent also subsequently provided Petitioner with a pouch he could put a cell phone in. (Testimony of Petitioner; Testimony of RN).

13. On October 17, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter regarding the Respondent's decision. (Exhibit F, pages 1-5).

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, July 1, 2022, version
PACE Chapter, pages 1-2
(Emphasis added)*

Here, Respondent denied Petitioner's request for a GPS PERS unit pursuant to the above policies and on the basis that the requested device is not medically necessary given the availability of other options.

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.

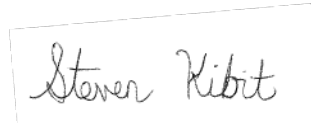
Given the available information and applicable policies in this case, Petitioner has met that burden of proof and Respondent's decision must therefore be reversed. Respondent previously determined that a PERS unit was medically necessary in his home given his fall history, and there does not appear to be any basis for a different finding for when Petitioner is out in the community. Petitioner's needs do not change when he leaves his home and, while Respondent found that Petitioner's wife is usually with Petitioner and could call for help in an emergency, that finding, even if true, is no different from when Petitioner is in his home and for which Respondent approved a PERS unit. Moreover, while other people may be present and able to assist Petitioner in some situations when he is outside of his apartment, such as when he is at the store, Petitioner also credibly testified that he is alone and outside of his home for hours at a time and it is undisputed that Petitioner shares a cell phone with his wife and may not have one on him at all times.

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 a GPS PERS unit.

IT IS THEREFORE ORDERED that:

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

A rectangular box containing a handwritten signature in cursive that reads "Steven Kibit".

SK/sj

Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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 30763
Lansing, Michigan 48909-8139

Via Electronic Mail:

DHHS Department Contact

Roxanne Perry
400 S PINE ST
LANSING, MI 48909
MDHHS-MSA-PACE@michigan.gov

Community Health Rep

Senior Care Partners PACE
Alyssa Brandt
445 W. Michigan Ave
Kalamazoo, MI 49007
a.brandt@seniorcarepartnersmi.org

Via First Class Mail:

Petitioner

[REDACTED]