

## ISSUE

Did Respondent properly authorize Petitioner's nutritional supplements through the Program of All-Inclusive Care for the Elderly (PACE)?

### FINDINGS OF FACT

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

1. PACE North is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS or Department) and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony).
  2. Petitioner is a female Medicaid beneficiary who has been receiving services through PACE. (Exhibit A; Testimony).
  3. Petitioner is diagnosed with CAD, chronic abdominal pain, constipation, COPD, diabetic gastroparesis, DM neuropathy, diverticulosis, HTN, non-alcoholic fatty liver disease, GAD, GERD, depression, obesity, schizoaffective disorder, and TZDM. (Exhibit A, p 3; Testimony)
  4. On September 28, 2022, PACE's Registered Dietician (RD) completed an
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assessment of Petitioner's need for nutritional supplements and recommended that those supplements be reduced to one per day beginning October 3, 2022 because Petitioner was only drinking one per day. (Exhibit A, pp 2-6; Testimony)

5. On October 17, 2022, Petitioner requested that her nutritional supplements be increased to two per day. (Exhibit A; Testimony)
6. On October 17, 2022, PACE's RD completed another assessment and again recommended that Petitioner's nutritional supplements remain at one per day. The RD determined that Petitioner's nutritional needs were currently being met with one nutritional supplement per day given that Petitioner is at the PACE center five days per week and can request an additional supplement there, Petitioner eats lunch at the PACE center five days per week, and Petitioner receives six home delivered meals per week. (Exhibit A, pp 7-8; Testimony)
7. On October 19, 2022, PACE's Interdisciplinary Team (IDT) reviewed Petitioner's request as well as the recent assessment by the RD and concluded that Petitioner would continue to receive one nutritional supplement per day. The IDT noted that Petitioner was currently consuming one supplement per day, attends the center five days per week, is non-compliant with her recommended diet, has a history of sharing her home delivered meals with her roommate, and was gaining weight. (Exhibit A, pp 9-10; Testimony).
8. On October 19, 2022, PACE sent Petitioner an Adequate Action Notice Denial of Service, denying the request for two nutritional supplements per day. The Notice included Petitioner's appeal rights. (Exhibit A, pp 12-18; Testimony).
9. On October 27, 2022, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit 1)

### 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
- 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

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#### 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.

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

Here, Petitioner requested an increase in nutritional supplements from one per day to two per day.

PACE's Quality Assurance Director (QAD) testified that on September 28, 2022, PACE's RD completed an assessment of Petitioner's need for nutritional supplements and recommended that those supplements be reduced to one per day beginning October 3, 2022 because Petitioner was only drinking one per day. PACE's QAD indicated that on October 17, 2022, Petitioner requested that her nutritional supplements be increased to two per day and that PACE's RD completed another assessment and again recommended that Petitioner's nutritional supplements remain at one per day. PACE's QAD testified that the IDT determined that Petitioner's nutritional needs were currently being met with one nutritional supplement per day given that Petitioner is at the PACE center five days per week and can request an additional supplement there, Petitioner eats lunch at the PACE center five days per week, and Petitioner receives six home delivered meals per week. PACE's QAD noted that as of December 27, 2022, Petitioner has discontinued her home delivered meals because

she was not eating them, but that another assessment by the RD again found that Petitioner's nutritional needs were being met with one supplement per day because Petitioner told the RD that she could make her own meals using her air fryer.

Petitioner testified that she drinks one nutritional supplement in the morning for breakfast and has one with her evening meal each day. Petitioner indicated that she needs two nutritional supplements per day. Petitioner admitted that she does attend the PACE center five days per week but may not in the future if she gets a dog.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying her request for two nutritional supplements per day. Based on the evidence presented, this Administrative Law Judge (ALJ) finds that Petitioner has failed to meet this burden of proof. Here, Respondent presented

sufficient evidence that they properly and thoroughly assessed Petitioner's nutritional needs in September and October 2022 and Petitioner's nutritional needs were being met with one supplement per day. As noted, Petitioner attends the PACE center five days per week and can request an additional supplement while there. Petitioner also eats lunch at the PACE center five days per week and, at the time of the negative

action, Petitioner was receiving five home delivered meals per week. And, while Petitioner has since cancelled her home delivered meals, this All is limited to reviewing

the information available at the time the decision was made. Even so, it was determined at a December assessment that Petitioner was not eating the home delivered meals anyway, but was preparing her own meals using her air fryer. Also, as noted, Petitioner continues to gain weight. As such, Petitioner has failed to provide any evidence that any additional nutritional supplements are medically necessary.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to meet the burden of proof and that Respondent properly denied Petitioner's request for increased nutritional supplements.

### **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 an increase in nutritional supplements.

**IT IS THEREFORE ORDERED** that:

The Respondent's decision is AFFIRMED.