

ISSUE

Did Respondent properly deny Petitioner's request for additional home care and additional weekly massages?

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 PACE in Petitioner's geographical area.

2. Prior to August 1, 2022, Petitioner was approved for 2 massages a week and 3 hours daily of home care. (Exhibit A; Exhibit B; Testimony.)
3. In or around August 2022, the Department reduced Petitioner's massages to 1 time a week due to a year of approximately 50% utilization and improving mental health. (Testimony.)
4. On August 1, 2022, Petitioner requested additional home services on Sunday mornings to assist in the placement of compression stockings that could be worn to church services. (Exhibit A; Testimony.)
5. As of August 1, 2022, Petitioner was not required to wear compression stockings on Saturdays or Sundays and Petitioner was able to wear socks to church. (Exhibit A; Testimony.)
6. On August 2, 2022, the Department sent Petitioner an Adequate Action Notice denying petitioner's request for additional home services. The noticed stated the following regarding the denial:

IDT denies the request for PACE providing [illegible] on Sundays to put on TED hose. You are not required to wear TED hose specifically on Sundays. Education and Training have been offered to you on how to put on her TED hose independently, you have declined these interactions. Because TED hose does not need to be worn on Sundays and you can wear normal socks/stockings to church (and is able to put on and take off normal socks), home care will not be provided.'

7. On August 9, 2022, Petitioner requested an internal appeal. (Exhibit A; Testimony.)
8. On August 22, 2022, Petitioner requested to have her prior allotment of 2 massages a week reinstated. (Exhibit B; Testimony.)
9. On August 24, 2022, the Department issued an Adequate Action Notice denying Petitioner's request for additional massages. The notice stated the following regarding the denial:

You have been utilizing an average of 1 massage per week since the massages were started over a year ago. There are multiple pain supports in place that you do utilize and have said they work including your pain medications including Norco, Gabapentin, Allopurinol for gout, prednisone when needed, alpha-lipoic acid, lidocaine

¹ Exhibit A, p 5.

patches, 10-10-10 cream, and Theraworx foam. You also have a PACE provided lift chair that has heat and massage capabilities that can provide relief when needed. PACE physical therapy is recommended and scheduled for twice a week as a joint care where soft tissue massage and pain modalities can be provided during these visits as appropriate for your pain. Your mental health has improved since 8/1/22, and the massages were decreased to 1 a week on 8/3/22 showing no negative effect on your mental health.²

10. On September 1, 2022, the Department issued an Appeals Request — Resolution Notification upholding the August 2, 2022, determination to deny additional home services. The notice stated the following regarding the denial:

Upon review of the supporting documentation, it is clear to this reviewer that the participant has been offered assistance in which to independently don the compression socks/TED hose, opportunity for use of assistive devices with training, and reassurance that the compression socks/TED hose are not necessary to be worn to church as she is able to don her regular socks which will cover her ankles.

IDT members will continue to offer her training with the assistive device, while still meeting her goals by helping her to be independent, offering her training & support, keeping her comfortable, self-sufficient, and ensuring the preservation of the modesty issue.³

11. On November 16, 2022, and November 30, 2022, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, requests for hearing regarding the denial of additional home services and additional massages.

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:

² Exhibit B, p 3.

³ Exhibit A, p 4.

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 ...⁴

In this case, the Department denied Petitioner's request for additional home care services and 1 additional massage a week. In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that Department 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.

Regarding both issues, the Petitioner failed to provide sufficient evidence to show it was medically necessary to have additional home services or that it was medically

⁴ MPM, Program of All-Inclusive Care for the Elderly, October 1, 2022, pp 1-2.

necessary for an additional massage. In fact, the evidence indicates the Petitioner's mental health has been improving and her pain has been controlled through her current regimen of medications and the use of one massage a week.

Furthermore, the Petitioner has not provided any evidence to dispute the Department's position that the TEN hose were not required on weekends and that Petitioner could wear regular socks/stockings when attending church.

Accordingly, for the reasons discussed above, the undersigned Administrative Law Judge finds that Petitioner has not met her burden of proof and that Respondent's decision must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's request for additional services.

IT IS, THEREFORE, ORDERED that:

Department's decision is AFFIRMED.