

## ISSUE

Did Respondent properly deny Petitioner's request for permanent housing placement?

### 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 Medicaid beneficiary who has been receiving services through PACE and has been diagnosed with numerous physical and mental health conditions, including dementia in other diseases classified elsewhere, unspecified severity. (Exhibit A, pp 14-16; Testimony)

3. Petitioner was living with his son and guardian at the time the request was made in this matter, but currently resides with family friends temporarily while a permanent housing situation can be found. (Exhibit A; Testimony)
4. On September 22, 2022, Petitioner's son requested permanent housing placement for Petitioner, either in an assisted living facility or an Adult Foster Care (AFC) home. (Exhibit A, pp 24-25; Testimony)
5. PACE's Social Worker and Occupational Therapist (OT) conducted an assessment, which included interviews with Petitioner and his son, and determined that there were other less restrictive options available to Petitioner other than permanent placement. The assessment was then reviewed by PACE's Interdisciplinary Team (IDT), who agreed that there were other options available, including subsidized housing and trial respite stays to allow caregiver breaks. (Exhibit A, pp 23-39; Testimony)
6. On September 28, 2022, PACE sent Petitioner a Denial of Service, indicating that the request for permanent housing placement had been denied based on the above assessments. Specifically, the notice indicated, "IDT recommends denial of permanent placement as the team feels he can live in the community with senior care partners in home supports, including home care, transportation, and center attendance. Team will partner with REDACTED to seek a less restrictive living environment in the community including subsidized housing and Rickman House." (Exhibit A, pp 3-10; Testimony)
7. On January 4, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's Request for Hearing. (Exhibit 1)

### 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 its services, the Medicaid Provider Manual (MPM) provides:

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
- 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

### **SECTION 3 - ELIGIBILITY AND ENROLLMENT**

#### **3.1 ELIGIBILITY REQUIREMENTS**

To be eligible for PACE enrollment, applicants must meet the following requirements:

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Health and Human Services (MDHHS).)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.
- Receive a comprehensive assessment of participant needs by an interdisciplinary team.
- A determination of functional/medical eligibility based upon the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online within fourteen (14) calendar days from the date of enrollment into the PACE organization.
- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.
- Not concurrently enrolled in the MI Choice program.
- Not concurrently enrolled in an HMO.

Here, Petitioner has requested permanent housing placement and Respondent has determined that other interventions can meet Petitioner's needs while keeping him in the community.

Respondent's Social Worker testified that after the request for permanent placement was received, he conducted an assessment, which included speaking with both Petitioner and his son/guardian. Respondent's Social Worker indicated that Petitioner's son informed him that placement was necessary because of behaviors in the home, such as flooding the bathroom. Respondent's Social Worker testified that he also spoke with Petitioner who indicated that he would be fine with a placement but wanted to maintain his independence. Respondent's Social Worker testified that after review, the IDT determined that the request would be denied because they believed they could support Petitioner in the community with services such as home care, transportation, and center attendance.

Respondent's Social Worker testified that he then worked with a resource specialist to submit applications for Petitioner at different subsidized housing options in the area, where Petitioner could have some assistance, but would still maintain some independence. Respondent's Social Worker indicated that he discussed wait times with Petitioner and his son, informing them that it normally takes 3-6 months for applications to be considered. Respondent's Social Worker explained that he and the team had concerns with Petitioner being placed in either an AFC home or an assisted living center because Petitioner has had difficulty sharing spaces with others in the past. Respondent's Social Worker testified that Petitioner suffers from paranoia and will often accuse others, including his son, of stealing from him. Respondent's Social Worker noted that Petitioner is also very independent physically.

Respondent's OT testified that Petitioner is physically and mentally able to process his own ADLs, although he may need help with laundry, housework, and shopping.

Petitioner's son testified that Petitioner needs a permanent placement and cannot live on his own. Petitioner's son indicated that Petitioner has left the water running in the bathroom on numerous occasions, resulting in flooding that Petitioner's son must pay for. Petitioner's son testified that Petitioner has also left the house on occasion while leaving the stove top or oven on and has left the home without closing or locking the front door. Petitioner's son indicated that Petitioner has misplaced or thrown out important papers and once dumped all the belongings from his room into the dumpster. Petitioner's son indicated that Petitioner suffers from anxiety and depression and has fears of possible medical issues. Petitioner's son testified that if Petitioner lived on his own there would be people who might take advantage of him. As far as living with others though, Petitioner's son indicated that Petitioner is fine with people he does not know. Petitioner's son indicated that Petitioner is currently residing with family friends, but the situation is only temporary until he can find a more permanent placement. Petitioner's son testified that Petitioner's problems are more mental than physical. Petitioner's son indicated that Petitioner moves from house to house but has been homeless at times in the past.

Petitioner's APS worker testified that her concern is Petitioner's housing stability as she has been working with him for about a year and a half after a few referrals. Petitioner's APS worker indicated that Petitioner does have a history of paranoia and accusing people of stealing from him. Petitioner's APS worker also noted that Petitioner's finances would be tight if he were in subsidized housing. Petitioner's APS worker testified that there are different levels of AFC homes, and it would be good for Petitioner to be in one where he could come and go as he pleased. Petitioner's APS worker indicated that Petitioner is physically independent, but he struggles with cognition and his short-term memory. Petitioner's APS worker testified that she has investigated housing options outside of PACE, but Petitioner would not be able to afford them. Petitioner's APS worker indicated that because of Petitioner's criminal history, he may have difficulty getting accepted into subsidized housing. Petitioner's APS worker noted also that most subsidized housing has a two-year waitlist.

In response, Respondent's Center Manager testified that they are required to look for the least restrictive setting for clients and an AFC home would be a restrictive environment for Petitioner. Respondent's Center Manager indicated that PACE seeks to protect the autonomy of its clients and she does not believe an AFC home, or assisted living, would be best for Petitioner. Respondent's Center Manager noted that none of the AFC homes they contract with allow residents to come and go as they please so it would be extremely restrictive for Petitioner. Respondent's Center Manager indicated that due to Petitioner's issues with cognition and wandering, he would probably be placed in a locked house. Respondent's Center Manager testified that PACE is always reassessing client's needs, and if getting help from PACE in the community is not successful, a permanent placement can always be revisited.

Given the above findings of fact and applicable policies, the undersigned Administrative Law Judge finds that Respondent properly denied Petitioner's request.

As indicated above, PACE provides an alternative to traditional nursing facility care in order to "[e]nable frail, older adults to live in the community as long as medically and socially feasible"; and, to be eligible for PACE enrollment, applicants must be "capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization." Here, Petitioner has failed to prove, by a preponderance of the evidence, that PACE erred in its determination. Upon Petitioner's request for a permanent placement, PACE conducted a comprehensive, in-person assessment of Petitioner, including an assessment by a Social Worker and an Occupational Therapist. The IDT, which also includes a Primary Care Physician, a Registered Nurse, a Physical Therapist, a Respiratory Therapist, a Registered Dietician, and a Home Care Coordinator then met, and determined that Petitioner is safe to remain in the community with PACE services. A review of these assessments shows that despite Petitioner's medical conditions, including possible dementia, Petitioner is totally independent with his ADL's and should do well with services in place. It is very important to Petitioner to maintain his independence and he has also shown that he is able to safely go out into the community to seek assistance when needed. PACE has

also indicated that if Petitioner's condition deteriorates further, more services are available to him, or the issue of a permanent placement can be revisited.

Therefore, based on the evidence presented, PACE's decision should be upheld.

**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 permanent housing placement.

**IT IS, THEREFORE, ORDERED** that:

Respondent's decision is **AFFIRMED**.