

## ISSUE

Did Respondent properly deny Petitioner's request for a power wheelchair 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 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 an adult female who has been receiving services through PACE. (Exhibit A; Testimony).
3. On September 26, 2022, PACE received a request from Petitioner for a power wheelchair. (Exhibit A, p 2; Testimony)
4. On September 27, 2022, PACE completed a face-to-face assessment with

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Petitioner in her home. Following the assessment, Petitioner was notified orally that the request would be denied because the Interdisciplinary Team (IDT) had concerns about safety relating to Petitioner's limited mobility and ability to adjust herself in the chair. (Exhibit A, pp 4-5; Testimony)

5. On September 27, 2022, PACE sent Petitioner a written notice informing Petitioner that her request for a power wheelchair was denied. The notice indicated, in pertinent part: "IDT feels that there are safety concerns with approving a power wheelchair related to your limited mobility and ability to adjust yourself in your chair. You would continue to require assistance to operate the vehicle safely in the community. IDT does not feel this would improve your ability to complete ADLs within the home." (Exhibit A, pp 6-7; Testimony)
6. On October 12, 2022, PACE received Petitioner's request for an internal appeal. (Exhibit A, pp 8-9; Testimony)
7. On November 2, 2022, after a review by an independent internal appeals committee, PACE notified Petitioner in writing that the committee was upholding the decision of the IDT to deny Petitioner a power wheelchair. (Exhibit A, pp 33-35; Testimony)
8. On January 11, 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 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

### **3.13 APPLICANT APPEALS**

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#### **3.13.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 MOAHR 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  
July 1, 2023, pp 1-2, 7*

With regard to medical necessity, the Medicaid Provider Manual indicates:

## 2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

### 2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish, or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

### 2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;

- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;
- Sufficient in amount, scope, and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

### **2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP**

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations;
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

### **2.5.D. PIHP DECISIONS**

Using criteria for medical necessity, a PIHP may:

- Deny services:

- > that are deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
  - > that are experimental or investigational in nature; or
  - > for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope, and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

*Medicaid Provider Manual  
Mental Health/Substance Abuse Chapter  
July 1, 2022, pp 13-14*

With regard to scooters and power wheelchairs, the Medicaid Provider Manual provides:

Power Wheelchair or Power-Operated Vehicle (POV) in Both Community Residential and Institutional Residential Settings

May be covered if the beneficiary meets all of the following:

- Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 60 feet over hard, smooth, or carpeted surfaces with or without rest intervals.
- Requires use of a wheelchair for at least four hours throughout the day.
- Is able to safely operate, control and maneuver the wheelchair in their environmental setting, including through doorways and over thresholds up to 1W, as appropriate.
- Has a cognitive, functional level that permits safe operation of a power mobility device with or without training.
- Has visual acuity that permits safe operation of a power mobility device.

- For a three-wheeled power mobility device, has sufficient trunk control and balance.

*Medicaid Provider Manual  
Medical Supplier Chapter July  
1, 2022, p 110*

PACE's PT testified that the IDT reviewed Petitioner's request for a power wheelchair and decided not to approve it for safety reasons. PACE's PT noted that since Petitioner cannot reposition herself in a chair, a power wheelchair would not be safe for her to use in the apartment and it would in no way improve Petitioner's ability to complete ADLs in her apartment. PACE's PT testified that Petitioner has been engaging in PT at the PACE center and that in unsupported seating Petitioner requires three people to assist her. PACE's PT indicated that the IDT determined that due to the amount of assistance Petitioner would still need with a power wheelchair, it would not be safe for her to operate the power wheelchair on her own.

Petitioner testified that she uses power scooters in stores and handles them quite well. Petitioner pointed out that she sits in her manual wheelchair unattended so she did not see the difference between that and being in a power wheelchair. Petitioner indicated that she is seeking more independence as her arms are not strong enough to move her manual wheelchair, which limits what she can do and where she can go. Petitioner noted that she always needs someone with her to do anything and with a power wheelchair she could do some things on her own. Petitioner testified that her son comes with her all the time, and he has developed a bad back from moving her around, which is not fair to him or to her. Petitioner indicated that she enjoys going down to the community area in the building, but once she is placed down there, she cannot move anywhere until someone comes back to get her. (Petitioner indicated that others in the community area are also elderly, and many use walkers or wheelchairs themselves, so they would be unable to move her.) Petitioner testified that she would also be able to get her mail on her own if she had a power wheelchair. Petitioner indicated that she wants to be social and meet people. Petitioner testified that she will work with PACE to learn how to use a power wheelchair if that would help. Petitioner indicated that she is only REDACTED years old and wants to try to enjoy life a little bit. Petitioner testified that she gets panic attacks lying in bed all the time. Petitioner also indicated that moving around in the power wheelchair might also help strengthen her core and arms as she would be able to do more things. Petitioner testified that she could go to the kitchen and do some cooking or dishes or go to the back of the house and help her son fold clothes. Petitioner indicated that she does not want to be stuck in a chair that does not move.

Petitioner's son testified that Petitioner has lost a lot of weight so now it only takes two people to help her transfer, not the three it took before. Petitioner's son noted that there is a man in the apartment building who is a quadriplegic, and he uses a power wheelchair, so it makes no sense that Petitioner could not use one.

In response, PACE's PT testified that power wheelchairs are only approved if they will help with ADLs in the home. PACE's PT indicated that they are working with Petitioner

on trunk control and if that improves enough so she can support herself in a chair then they can revisit the power wheelchair.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying her request for a power wheelchair. Based on the above evidence presented, this Administrative Law Judge finds that Petitioner has failed to meet this burden of proof. As PACE's PT pointed out, and the above policy supports, power wheelchairs are approved only if they will help with ADLs in the home. Here, given that Petitioner cannot support herself in a chair, a power wheelchair would not help her perform any more ADLs in the home. When Petitioner is being propelled in a manual wheelchair, someone is always there to assist her if she slips or needs repositioning. However, with a power wheelchair, as Petitioner indicated, she plans to do more things on her own, which would not be safe with her current capabilities. Of course, as Petitioner's strength improves, she may be able to be on her own and a power wheelchair could be reconsidered.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to prove, by a preponderance of the evidence, that Respondent's denial was improper.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that Respondent properly denied Petitioner's request for a power wheelchair.

**IT IS THEREFORE ORDERED** that:

The Respondent's decision is **AFFIRMED**.