

ISSUE

Did Respondent properly deny Petitioner's request for increased center attendance for physical therapy?

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 has been enrolled as a participant with Respondent since REDACTED 2021. (Exhibit #1, page 11).
3. As part of his services, Petitioner attended Respondent's day center three days a week for physical therapy. (Testimony of Physical Therapist).

4. In August of 2022, Petitioner was hospitalized for pneumonia. (Testimony of Physical Therapist).
5. Following his hospitalization, Petitioner was admitted to a Skilled Nursing Facility (SNF), Ashley Care Center, where his services included physical therapy. (Testimony of Physical Therapist).
6. On REDACTED 2022, Petitioner was admitted to another SNF, Riverside Health Center, where his services included physical therapy. (Testimony of Petitioner; Testimony of Physical Therapist).
7. Petitioner did not demonstrate significant improvement while receiving physical therapy from Respondent or the SNFs between July and October of 2022. (Testimony of Physical Therapist).
8. Effective October 31, 2022, Riverside Health Center ended its physical therapy with Petitioner on the basis that Petitioner was not making any gains and was at his new functional baseline. (Exhibit #1, pages 43-44).
9. On November 7, 2022, Petitioner requested increased center attendance with Respondent so he could receive physical therapy there. (Exhibit #1, pages 3, 5).
10. Respondent scheduled an assessment for physical therapy for November 10, 2022, but Petitioner declined to come into the day center that day. (Exhibit #1, page 46).
11. On November 10, 2022, Respondent sent Petitioner written notice that his request for increased center attendance for physical therapy had been denied. (Exhibit #1, pages 7-8).
12. With respect to the reason for its decision, Respondent stated:

Your request for therapy at PACE Day Center has been denied because you are at your baseline functional status and the team doesn't believe additional therapy will benefit you. Additionally, you have had poor participation in therapy services at your skilled nursing facility stay.

Exhibit #1, page 7

13. On November 16, 2022, Petitioner filed an appeal with Respondent regarding that denial. (Exhibit #1, page 9).
14. On December 15, 2022, Respondent sent Petitioner written notice that the original denial had been upheld following review of Petitioner's appeal.

(Exhibit #1, pages 48-49).

15. With respect to the reason for its decision, Respondent stated:

The committee voted unanimously to uphold the IDT's decision to deny this request due [sic] you [sic] your limited progress and having reached the maximum benefit with therapy.

Exhibit #1, page 48

16. On January 11, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter. (Exhibit #1, pages 1-50).

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
- Diagnostic services . . .

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

Here, Respondent denied Petitioner's request for increased center attendance for physical therapy.

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 not met that burden of proof and Respondent's decision must therefore be affirmed.

Respondent's physical therapist credibly testified that his assessment of Petitioner and Petitioner's records demonstrate that, while Petitioner received physical therapy from either Respondent or a SNF between July and October of 2022, he failed to demonstrate significant improvement; he remained at his functional baseline; and any additional therapy would not be beneficial or medically necessary. Moreover, Petitioner testified that he believed at the time he filed his request for hearing that he could improve with additional therapy, but that he is no longer sure and has no idea what more they could try. Accordingly, given that the record reflects that the requested physical therapy would not be beneficial, and consequently not medically necessary, and Respondent's decision was proper.

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 increased center attendance for physical therapy.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.