

ISSUE

Did Respondent properly terminate Petitioner's day center attendance?

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 enrolled as a participant with Respondent and, as part of his services, Petitioner has been attending Respondent's day center. (Testimony of Respondent's representative).
3. At the day center, he was the founder and a member of the Ambassador Club, which would greet and assist new residents. (Testimony of Petitioner's representative; Testimony of Recreational Therapy Manager).
4. He would also listen to music performances; observe exercise groups; play bingo; and play trivia. (Testimony of Recreational Therapy Manager).
5. In REDACTED of 2022, Petitioner moved into Linden Square, an Assisted Living Center. (Testimony of Petitioner's representative).
6. At Linden Square, Petitioner is on a Resident Council that meets monthly to discuss complaints. (Testimony of Petitioner; Testimony of Petitioner's representative).
7. Linden Square also has a range of activities, but Petitioner cannot participate in a lot of them. (Testimony of Petitioner's representative; Testimony of Respondent's representative).
8. In February of 2023, Respondent decided to terminate day center attendance for approximately forty-five (45) participants, including Petitioner, who had alternative living settings. (Testimony of Respondent's representative).
9. It also told any participants who were losing services to submit a request if they still wanted to attend Respondent's day center. (Testimony of Respondent's representative).
10. Petitioner submitted such a request. (Testimony of Petitioner).
11. On February 10, 2023, Respondent sent Petitioner written notice that his request to continue his day center attendance was denied. (Exhibit A, page 4).
12. With respect to the reason for its decision, Respondent stated: **"IDT denies this request due to socialization, and support services are provided at the facility where he resides."** (Exhibit A, page 4).
13. On March 2, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter. (Exhibit A, pages 1-4).

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, 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

*MPM, January 1, 2023, version
PACE Chapter, pages 1-2
(Emphasis added)*

Here, as a preliminary matter, the undersigned Administrative Law Judge would note that, while Respondent issued a notice denying Petitioner's request for continued attendance at Respondent's day center, Respondent's action is more properly identified as a termination than a denial, as it involved a service that was being received, and that ended against Petitioner's wishes rather than any new request for services.

Regardless, in support of the termination, Respondent's representative testified that it decided in February of 2023 to terminate day center attendance for approximately forty-five (45) participants, including Petitioner, who had alternative living settings, with the participants directed to file a new request for services if they wanted to continue to attend the day center.

She also testified that, while those participants had been permitted to come into the day center during the COVID-19 pandemic, other places and activities had now opened up and the day center attendance was no longer necessary.

She further testified that Respondent's leadership team met with representatives from all of the alternative living settings; asked for and reviewed schedules of activities from those settings; and boosted oversight of the participants. However, she also testified during the hearing that, upon review of the calendar of activities at Petitioner's facility, she did not see a lot that he could do.

Other witnesses for Respondent testified regarding what Petitioner has been participating in at the day center and how his other needs would continue to be met there.

In response, Petitioner's representative testified that Petitioner has been attending Respondent's day center for at least eight (8) years and that it has been a key part of his life. She also testified that PACE is a place of peace and respite for Petitioner; his peer group is at the day center; and that it is beneficial for him to be around people who know him and could identify any potential issues upon casual observation. She further testified that Petitioner helped to found the Ambassador Club at the day center, which involved ambassadors greeting and assisting new residents, and that it is very important to him.

Regarding the facility Petitioner now lives in, Petitioner's representative testified that Linden Square is not his "home"; he is the only person of color there; and that Linden Square provides inadequate care, with insufficient social and exercise options. She also testified that any services there are provided in isolation and/or online, and that, while Petitioner is on a Resident Council there, it only meets once a month and is just a gathering of complaints. She further testified that other residents there are not as respectful or engaging, and that they just stay in their rooms.

In appealing the decision in dispute, 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 met that burden of proof and Respondent's decision must therefore be reversed.

The need for socialization and support services is not disputed and the only question is whether those needs can be met at Petitioner's assisted living facility.

And, while Respondent found that they could, and that day center attendance was therefore no longer needed, Petitioner's representative credibly testified as to why not, including what is lacking at Linden Square as opposed to what he was receiving at the day center.

Moreover, Petitioner's representative's testimony is essentially undisputed. Respondent's initial decision did not appear to include an individualized assessment for Petitioner and there is really nothing in the record to support any finding it made during

a subsequent assessment. For example, the initial decision was made with respect to 45 different participants, including Petitioner, solely based on their living arrangement. Additionally, while Respondent's representative testified that its leadership team met with all the assisted living facilities and asked for a schedule of activities, even she agreed that there was not a lot of activities Petitioner could do on Linden Square's calendar of activities.

Petitioner's mere preference for the day center over his assisted living facility would not constitute medical necessity for continued day center attendance, but, given the record in this case and the preponderance of the evidence supporting a finding that Respondent erred in making its decision, the undersigned Administrative Law Judge will reverse Respondent's decision and order that it initiate a reassessment of Petitioner's request.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent improperly terminated Petitioner's day center attendance.

IT IS THEREFORE ORDERED that:

Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's request for continued day center attendance.