

ISSUE

Did Respondent properly deny Petitioner's request for in-home ventilator management?

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 REDACTED year-old Medicaid beneficiary who is enrolled as a PACE participant with Respondent. (Exhibit A, page 12).

3. She was living in her home with her husband; with living independently with him identified as her most important goal in her care plan. (Exhibit A, pages 20-21).
4. In April of 2022, Petitioner had a cardiac arrest and was hospitalized for a prolonged period, with a tracheostomy completed. (Exhibit A, page 28).
5. In July of 2022, she subsequently returned home, where she was primarily taken care of by her husband. (Exhibit A, page 28; Testimony of Petitioner's representative).
6. In February of 2023, Petitioner was again hospitalized, and, during her hospitalization, she was put on a ventilator. (Testimony of Petitioner's representative; Testimony of Respondent's representative).
7. All subsequent attempts to wean Petitioner off the ventilator were unsuccessful. (Exhibit A, pages 27, 29, 32; Testimony of Physician Assistant).
8. On February 10, 2023, a meeting was held between Petitioner's representative and staff from Respondent. (Exhibit A, page 28).
9. During that meeting, a goal of keeping Petitioner out of a nursing home was identified, though Respondent did note that Petitioner's representative had unrealistic expectations (Exhibit A, page 28).
10. As part of keeping Petitioner in her home, Petitioner requested in-home ventilator management through Respondent. (Testimony of Respondent's representative).
11. On February 13, 2023, Respondent called Petitioner's representative to confirm a meeting about discharge planning. (Exhibit A, page 29).
12. At that time, it also noted:

[Petitioner's representative] is still planning on bringing [Petitioner] home no matter what. He reports he is looking for a second person to help him be another caregiver. This RN did tell him that S CPP as an organization we will not be able to support REDACTED on a vent at home at this time and this is why we need to start the discharge planning now.

13. After the meeting on February 15, 2023, Respondent further noted:

Team discussed discharge options with [Petitioner's representative]. Provided him with education that SCPP most likely will not be able to support [Petitioner] at home on a vent. Dr. Schreiner provided a lot of education to [Petitioner's representative] regarding vents and requirements needed to return home on a vent . . . Team explained that SCPP does not have trained staff to provide support with a vent. Also explained that [Petitioner's representative] would have to have another trained person to be able to provide and be available around 12 hours per day. Informed [Petitioner's representative] that SCPP can not provide this to [Petitioner]. Outlined discharge options at a SNF . . . Informed [Petitioner's representative] that SCPP will support [Petitioner] at Select for two weeks from this date . . . [Petitioner's representative] is going to also speak to some of his friends and family to see if anyone is available to be the second person he needs. Another meeting will be scheduled for one week to discuss discharge plans again with [Petitioner's representative].

Exhibit A, page 29

14. On February 16, 2023, a doctor with Respondent further noted:

Her current FiO2 qualifies for care in a SNF. They are trying to wean however she is not currently succeeding or breathing over the vent. [Petitioner's representative] reports that she is responsive and communicating with him, however Emily and our staff has not seen this. Based on [Petitioner's representative's] difficulty taking care of [Petitioner] in the home prior to the current deterioration, her increased care needs, lack of second care giver, lack of infrastructure, SCP and/or [Petitioner's representative] do not currently have the resources to support [Petitioner's] extensive care needs in the home at this time . . . " i have entered a SDR for the request of d/c home on the ventilator

Exhibit A, page 30

15. On February 20, 2023, Respondent's interdisciplinary team (IDT) met and concluded that Petitioner's request for in-home ventilator management should be denied due "to not having the staff and training to support a vent at home. (Exhibit A page 31).
16. On February 21, 2023, Respondent sent Petitioner written notice that her request for in-home ventilator management had been denied. (Exhibit A, pages 4-11).
17. With respect to the reason for its decision, Respondent stated:

Presently Participant is ventilator dependent, no sign of spontaneous breathing over the ventilator, attempts have been trialed to see if she is able to reduce setting but continues to desaturate. As well, we do not have staff or training to manage ventilator use 24/7.

Exhibit A, page 4

18. On February 24, 2023, Respondent held another discharge meeting with Petitioner and her representative, after which Respondent noted:

[Petitioner's representative] expressed his desire to care for [Petitioner] in the home. We expressed our desire to support this. However, we reviewed with [Petitioner's representative] and the Select staff that she has not been able wean further from the vent at this time. She is stable for discharge from Select however, [Petitioner's representative] does not have 24 hour vent support and SCP can not offer in home 24 nursing support. Alternatively, we will need to provide this level of care in a nursing facility. [Petitioner's representative] understands what we are saying, however disagrees and feels that we should provide them 24 nursing support.

Exhibit A, page 33

19. On February 24, 2023, Petitioner filed an appeal with Respondent regarding that denial. (Exhibit A, page 60).
20. Respondent's Internal Appeal Committee (IAC) met on March 7, 2023, and determined that Petitioner's appeal should be denied. (Exhibit A, page 57).

21. In doing so, it noted that Petitioner would be best supported in a facility; that it would be difficult to provide the home vent management in the home; and that the service is currently beyond the capability of the PACE environment. (Exhibit A, page 57).
22. On March 7, 2023, Respondent sent Petitioner written notice that the original denial had been upheld following review of Petitioner's appeal. (Exhibit A, pages 60-61).
23. With respect to the reason for its decision, Respondent stated:

The IAC has unanimously agreed to uphold IDT's decision to deny the request due to in-home ventilator management being an intensive service that is currently beyond the capabilities of the PACE environment.

Exhibit A, page 60

24. On March 13, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter. (Exhibit A, page 59).

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**
- **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
(Italics added for emphasis)*

Here, as discussed above, Respondent denied Petitioner's request for in-home ventilator management on the basis that it is an intensive service beyond Respondent's capabilities, with Respondent lacking the staff or training to manage ventilator use 24 hours a day, 7 days a week.

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 met that burden of proof and Respondent's decision must therefore be reversed.

The medical necessity for the requested ventilator management is undisputed and it is only a question of where it is to be provided and by whom, with Petitioner wanting it in her home and Respondent finding that it should be provided in a SNF.

However, in making its decision, Respondent's documentation was inconsistent with respect to what specific services would be needed, with staff writing at times that Petitioner only needed trained personnel with her while at other times, identifying a need for around-the-clock nursing support. Similarly, Respondent's witnesses testified regarding a need for nurses at times during the hearing, while also conceding that nurses were not necessary at other times and that trained lay persons could meet Petitioner's needs.

Moreover, the record also demonstrates that Respondent did not pursue meeting Petitioner's needs, whatever they were, in the home. Instead, Respondent immediately and broadly found that the in-home ventilator management is a service that it does not provide. However, as provided in the above policy, the PACE service must include all medically necessary services, with Respondent assuming full financial risk for beneficiary care without limits on amount, duration, or scope of services.

While Respondent may not set limits on the amount, duration or scope of services, that does not mean that any or all potential medically necessary services must be provided, such as equipping the equivalent of a hospital in Petitioner's home, would be required and the goal of PACE services is only to keep beneficiaries in the community for as long as medically and socially feasible. However, Respondent did not make such a finding in this case or base its denial on those grounds.

Accordingly, given the inconsistencies in Respondent's evidence as well as the improper limit it placed on covered services by broadly excluding in-home ventilator management, the undersigned Administrative Law Judge finds that Respondent erred; its decision in this case must be reversed; and it must reassess Petitioner's request for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent improperly denied Petitioner's request for in-home ventilator management.

IT IS THEREFORE ORDERED that:

Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's request for services.