

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 a REDACTED Medicaid beneficiary who is enrolled as a participant with Respondent. (Exhibit B, page 1).
3. He speaks little English and has been diagnosed with, among other conditions, a history of falling; major depressive disorder; a mild cognitive impairment; and generalized anxiety disorder. (Exhibit C, pages 1, 9-14).
4. He lives at Vibrant Life Senior living facility and participates in activities there, but, as part of his services with Respondent, Petitioner has also been attending Respondent's day center one day a week. (Exhibit C, page 1; Testimony of Petitioner's representative).
5. In February of 2023, Respondent decided to terminate day center attendance for participants, like Petitioner, who had alternative living settings. (Testimony of Respondent's representative).
6. 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).
7. Petitioner submitted such a request. (Exhibit B, pages 2-3).
8. Respondent's interdisciplinary team (IDT) then reviewed the request. (Exhibit B, pages 2-3; Testimony of
9. On February 15, 2023, Respondent sent Petitioner written notice that his request to continue his day center attendance was denied. (Exhibit B, pages 6-7).
10. With respect to the reason for its decision, Respondent stated: **"IDT denies this request due to socialization and support services provided at the facility where he resides."** (Exhibit B, page 6).
11. On March 14, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter. (Exhibit A, pages 1-5).
12. On March 21, 2023, Respondent conducted an oversight visit at Vibrant Life with respect to Petitioner. (Exhibit E, pages 1-3).

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 participants like 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.

In particular, she testified that Petitioner's living facility offers a number of activities, and that Respondent's team still provides team visits and services on site. She also testified that Respondent's IDT met twice with each participant and made a group decision in this case.

Respondent's Recreational Therapy Director testified that it received and reviewed a recreational schedule from Vibrant Life. She also testified that she has seen Petitioner taking part in and participating with others at Vibrant Life's activities area.

Respondent's Social Worker testified that Petitioner participates in activities at both Vibrant Life and at Respondent's day center when he can.

Respondent's Occupational Therapist testified that Petitioner participates in activities and the exercise program at Vibrant Life. She also testified that Petitioner was very motivated at the day center too.

Respondent's Rehab Manager testified that staff from Respondent goes to Vibrant Life, and that Petitioner receives restorative therapy there, with the staff also providing monitoring and oversight.

Respondent's Nurse Practitioner, who is also Petitioner's primary care physician, testified that Petitioner has behavioral difficulties related to his dementia, depression, and anxiety; and that coming into the day center once a week has been helpful. She also testified that, from mental health standpoint, she disagrees with Respondent's decision.

In response, Petitioner's representative testified that Petitioner really looks forward to coming to PACE; he is familiar with and loves everyone there; and that his regularity is important to him. She also testified that Petitioner's depression makes him very isolated and trapped.

She further testified that Petitioner's family and the staff at Vibrant Life are working hard with Petitioner, and he is finally getting settled, but that the termination in this case would be taking away his regular socialization and staff.

With respect to Petitioner's physical needs, she also testified that Respondent has better machines for physical therapy than Vibrant Life, and that Petitioner has issues with falls.

Respondent's Rehab Manager then testified that Respondent provides both occupational and physical therapy on site at Vibrant Life, and that the services have not been discontinued. She did concede that Vibrant Life does not have the machines Respondent has, but that Petitioner has no active need for restorative therapy or for machines, and that Respondent has portable machines it can bring in if they prove necessary.

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 failed to meet that burden of proof and Respondent's decision must therefore be affirmed.

The need for socialization and support services is not disputed in this case and the record further reflects, through both Petitioner's representative's credible testimony and the testimony of Respondent's witnesses, that Petitioner's needs were being properly met through his day center attendance.

However, while undisputedly beneficial the question in this case is whether the day center attendance is medically necessary, and Petitioner has failed to make such a showing in this case as Petitioner's need for socialization and support services can also be met at Petitioner's living facility.

Respondent's witnesses credibly and fully explained the decision in this case, including its reviews of the activities generally available at Vibrant Life; its specific observations of Petitioner participating in those activities; and the continuing services provided at the new location.

Moreover, while Petitioner's representative credibly testified that Petitioner's routine is very important, she also testified that Petitioner is settling in at Vibrant Life and the need for a further adjustment period does not negate the fact that Petitioner's needs can be met without the day center attendance.

Petitioner's preference for the day center over his living facility does not constitute medical necessity for continued day center attendance, and, given the record in this case and the preponderance of the evidence supporting Respondent's decision, the undersigned Administrative Law Judge finds that Respondent's decision must be affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.