

## **ISSUE**

Did Respondent properly deny Petitioner's request for permanent placement in an assistive living facility?

## **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 11).

3. She has been diagnosed with, in addition to many physical issues, insomnia; major depressive disorder; noncompliance with medication regimen; and unspecified dementia. (Exhibit A, pages 15-16).
4. Petitioner has a legal guardian, but lives independently with supports, in her home. (Exhibit A, pages 20, 28).
5. On REDACTED 2023, Petitioner was found by the police wandering out in the cold and was taken to the emergency room. (Exhibit A, page 33; Testimony of Center Manager).
6. She was subsequently determined to be stable, but she was still admitted due to no safe disposition. (Exhibit A, page 33).
7. After Petitioner was discharged from the hospital on REDACTED 2023, Respondent placed her in a respite home to determine if Petitioner could go home with additional supports. (Exhibit A, page 33)
8. Petitioner's guardian requested that Petitioner be permanently placed in an assistive living facility. (Exhibit A, page 30; Testimony of Petitioner's representative).
9. Between March 1, 2023, and March 3, 2023, Petitioner was assessed by staff from Respondent, including a doctor; a registered dietitian; a physical therapist; a nurse; a social worker; and an occupational therapist. (Exhibit A, pages 33-38).
10. On March 3, 2023, Respondent's interdisciplinary team (IDT) also met and reviewed Petitioner's case. (Exhibit A, page 31).
11. As part of that meeting, it found:

Discussed that "wandering" for [Petitioner] is often purposeful in nature and that [Petitioner] tends to seek familiar items that are of importance to her, including Pepsi and cigarettes. Discussed working with guardian and home care services to ensure that [Petitioner] is stocked up on these items to help reduce instances of leaving home to purchase them. Discussed that nicotine vape or patch could be trialed to help manage desire to smoke. Can configure care coach to cycle through routine check ins and alert SSCP if [Petitioner] is noted to be leaving the home. Care coach can also be utilized to help make [Petitioner] successful with increased day

center attendance throughout the week as she has identified that she enjoys socializing at the day center. Discussed possible use of GPS piers or air tag to help locate [Petitioner] should she become turned around when leaving home so that she can be located more easily. Team discussed looking into county programs such as miles for memories to help acquaint the police with [Petitioner] so that they will know who to contact if [Petitioner] were found wandering. Also discussed increasing home care services or self-determination for the neighbor for check in or "tuck-in" visits. IDT team identified that it remains important for [Petitioner] to live within her home so that she can continue to smoke. Also discussed that [Petitioner] may be having increased confusion at this time due to acute process vs progression of her dementia. Discussed that this is the first time that [Petitioner] has wandered away from home and required police assistance/hospitalization. IDT recommends trying the above interventions prior to permanently removing [Petitioner] from her familiar environment.

*Exhibit A, page 31*

12. That same day, Respondent sent Petitioner's guardian written notice that the request for permanent placement had been denied. (Exhibit A, pages 3-10).
13. With respect to the reason for its decision, Respondent stated:

[T]he S CPP team is going to trial other interventions to help support [Petitioner] and reduce wandering.

*Exhibit A, page 3*

14. On March 24, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter with respect to that denial. (Exhibit A, pages 25-29).
15. Petitioner has remained in the respite home during the appeals process. (Testimony of Social Worker).

16. She also has no home to return to at this time. (Testimony of Social Worker).

## 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 permanent placement in an assistive living facility pursuant to the above policies.

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.

It is undisputed that Petitioner has significant mental and physical issues, including a recent elopement where Petitioner was found wandering in the cold by the police, but Respondent's witnesses and documentation credibly and fully explained how

Respondent assessed Petitioner and determined she could remain in the home with additional supports.

Moreover, while Petitioner's representative/guardian testified regarding a recent decline in Petitioner, and Petitioner's representative's determination that she will not allow Petitioner to return to living independently, 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; the whole purpose of PACE is to enable people to live in the community as long as medically and socially feasible; and Petitioner cannot demonstrate that the additional supports proposed by Respondent would be insufficient for Petitioner without them being tried first.

To the extent the additional supports proposed by Respondent prove to be insufficient, Petitioner's circumstances change, or her guardian has additional or updated information to provide regarding Petitioner's need for a permanent placement, then Petitioner's representative can always request a placement again in the future. With respect to the decision at issue in this case however, Respondent's decision must be affirmed given the available information and applicable policies.

### **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 permanent placement in an assisted living facility.

**IT IS THEREFORE ORDERED** that:

Respondent's decision is **AFFIRMED**.