

ISSUE

Did Respondent properly deny Petitioner's request for a transfer to another assisted 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 Medicaid beneficiary who has been receiving services through PACE and has been diagnosed with numerous physical and mental health conditions, including dementia in other diseases classified elsewhere, severe, with other behavioral disturbances. (Exhibit A, pp 11-18; Testimony)

3. On REDACTED 2023, Petitioner was moved to White Oaks assisted living facility, supported by PACE, for behavioral respite. (Exhibit A, pp 78-80; Testimony)
4. On or about REDACTED 2023, Petitioner's daughter/DPOA formally requested that Petitioner be transferred from White Oaks to an assisted living facility near her in REDACTED Michigan due to concerns with Petitioner's care at White Oaks. (Exhibit A, pp 56-94; Testimony.)
5. Petitioner's daughter/DPOA had made PACE aware that she eventually planned to move her mother closer to her. (Exhibit A, pp 83-85; Testimony)
6. Following an assessment of the request to transfer facilities PACE's Interdisciplinary Team (IDT) denied the request finding that Petitioner's needs could be met at the current facility and keeping her in the PACE service area would allow the PACE team to provide Petitioner with the highest level of care until disenrollment or transfer to another PACE program could occur. (Exhibit A, pp 95-109; Testimony)
7. On March 9, 2023, PACE sent Petitioner's daughter/DPOA a Denial of Service, indicating that the request for a transfer to another assisted living facility had been denied based on the assessment. (Exhibit A, pp 3-10; Testimony)
8. On REDACTED 2023, Petitioner's daughter/DPOA signed a contract with another assisted living facility in REDACTED Michigan; Divine Life, in which she agreed to be responsible for the cost of care from the signature date through REDACTED 2023, for a total cost of REDACTED (Exhibit A, pp 54-55; Testimony)
9. Petitioner's daughter/DPOA moved Petitioner to Divine Life on or about REDACTED 2023 and disenrolled from Senior Care Partners PACE effective REDACTED 2023. (Exhibit A, p 107; Testimony)
10. PACE informed Petitioner's daughter/DPOA that she would be responsible for any costs incurred at a new facility through the end of REDACTED 2023, as Senior Care Partners PACE did not have a contract with the facility Petitioner was being moved to, and that facility was outside of PACE's service area. PACE informed Petitioner's daughter/DPOA that due to contractual and policy requirements, they could not disenroll Petitioner in the middle of the month. (Exhibit A, pp 106-107; Testimony)
11. On June 5, 2023, the Michigan Office Administrative Hearings and Rules (MOAHR) received Petitioner's Request for Hearing. (Exhibit A, p 47)

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 its services, the Medicaid Provider Manual (MPM) provides:

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

SECTION 3 - ELIGIBILITY AND ENROLLMENT

3.1 ELIGIBILITY REQUIREMENTS

To be eligible for PACE enrollment, applicants must meet the following requirements:

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Health and Human Services (MDHHS).)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.
- Receive a comprehensive assessment of participant needs by an interdisciplinary team.
- A determination of functional/medical eligibility based upon the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online within fourteen (14)

calendar days from the date of enrollment into the PACE organization.

- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.
- Not concurrently enrolled in the MI Choice program.
- Not concurrently enrolled in an HMO.

*Medicaid Provider
Manual PACE Chapter
January 1, 2023, pp 1-3
Emphasis added*

Here, Petitioner requested a transfer to another assisted living facility and Respondent determined that such a transfer would not have been in Petitioner's best interests at the time of the request.

Respondent's witnesses testified that Petitioner's daughter/DPOA requested that Petitioner be transferred to another facility because she wanted to be closer to her mother at the end of her life and because she had numerous concerns with the current facility. Respondent's witnesses indicated that they completed an assessment, which included meeting with Petitioner. Respondent's witnesses testified that Petitioner appeared very frail, and they believed she was at the end of her life. Respondent's witnesses testified that they were concerned that moving her would be detrimental to Petitioner and possibly shorten her life. Respondent's witnesses indicated that their IDT reviewed the assessment and agreed that the transfer would be denied at that time because Petitioner's needs were being met at the current facility and the IDT thought it would be best for Petitioner to remain in the service area so she could continue to receive treatment until Petitioner could transfer to another nursing facility and PACE organization. Respondent's witnesses testified that since the denial, Petitioner's daughter/DPOA has moved Petitioner from White Oaks, against their recommendation, to a nursing facility in REDACTED Michigan, which is outside their service area. Respondent's witnesses indicated that Petitioner's daughter/DPOA disenrolled Petitioner from their PACE organization, effective March 31, 2023.

Petitioner's daughter/DPOA testified that she permitted Petitioner to be moved to respite at White Oaks on REDACTED 2023, which was intended to be behavioral respite to work on Petitioner's behaviors and insomnia. Petitioner's daughter/DPOA indicated that Petitioner was relatively healthy at the time even though she suffered from dementia and incontinence. Petitioner's daughter/DPOA testified that within 10 days of going to White Oaks, Petitioner's medications had been changed three times and one medication was added without her consultation. Petitioner's daughter/DPOA indicated that she then asked to speak to Petitioner every day but was denied by the facility. Petitioner's daughter/DPOA testified that on REDACTED 2023 Petitioner was sent to

Bronson hospital without her being notified, and was given a medical concoction to calm her down. Petitioner's daughter/DPOA indicated that this concoction left Petitioner incoherent, unable to respond, or eat or drink. Petitioner's daughter/DPOA testified that she traveled to the hospital from her home, and when the hospital released Petitioner, she had no choice but to let her go back to White Oaks. Petitioner's daughter/DPOA testified that her sister and family friends visited Petitioner over the next several days but could not get her to eat or drink.

Petitioner's daughter/DPOA testified that she had been planning to move Petitioner closer to her since 2022, and she advised PACE of this fact. Petitioner's daughter/DPOA indicated that on March 6, 2023 she learned that White Oaks had filed for guardianship over her mother, so she spoke to PACE over the next few days about moving Petitioner to the facility in REDACTED Petitioner's daughter/DPOA testified that there was no logical reason for Petitioner to remain at White Oaks, and, based on the way everything had been mishandled, she was afraid for Petitioner's life if she was left at White Oaks.

Petitioner's daughter/DPOA testified that she signed the paperwork with the facility in Haslett on REDACTED, 2023 and moved Petitioner there on REDACTED 2023. Petitioner's daughter/DPOA testified that Petitioner is doing as well as she can at the new facility with the conditions she has. Petitioner's daughter/DPOA testified that because PACE would not allow her to disenroll in the middle of March 2023, or transfer Petitioner to the Haslett facility, Petitioner was responsible for the cost of her care at the new facility until REDACTED, 2023 in the amount of REDACTED. Petitioner's daughter/DPOA indicated that she would like PACE to reimburse Petitioner for this amount.

In response, PACE's witnesses indicated that the denial of the transfer was just a denial for transfer in the middle of the month, and they tried to get Petitioner's daughter/POA to wait until closer to the end of the month so they could continue to oversee her care until she would be eligible for services in the Haslett area. PACE's witnesses testified that they informed Petitioner's daughter/DPOA that Petitioner would be responsible for the cost of her own care if she moved out of the service area before the end of the month.

Given the above findings of fact and applicable policies, the undersigned Administrative Law Judge finds that Respondent PACE properly denied Petitioner's request.

As indicated above, "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 . . . nursing facility care when necessary." Here, there is no dispute that Petitioner required nursing facility care at the time of the denial. Petitioner's daughter/DPOA does not dispute this and, in fact, moved Petitioner to another nursing facility after removing her from White Oaks. Having reviewed all the evidence, it is apparent that PACE was doing everything possible to oversee Petitioner's care at White Oaks and it does not appear, at least to the undersigned, that Petitioner was actually in any immediate danger at the time of the denial. And, when Petitioner's daughter/DPOA approached PACE about the transfer, PACE clearly told Petitioner's daughter/DPOA

that because the facility in Haslett was not in their service area, Petitioner would be responsible for any cost until Petitioner could be enrolled with the local PACE agency. Petitioner's daughter/DPOA decided to transfer Petitioner before the end of REDACTED 2023, which was within her rights, but that does not mean that PACE is responsible for costs occurred outside of its service area. PACE's decision to deny the transfer in the middle of the month was reasonable and supported by policy.

Therefore, based on the evidence presented, PACE's decision should be upheld.

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 a transfer to another assisted living facility.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is AFFIRMED.