

## **ISSUE**

Did Respondent properly deny Petitioner's request for enrollment in PACE?

## 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) and oversees PACE in Petitioner's geographical area.
2. Petitioner is a REDACTED year-old Medicaid beneficiary who has been diagnosed with dementia. (Exhibit D, page 5).
3. Since May of 2022, Petitioner has been living with his son and daughter-in-law. (Exhibit C, page 1; Testimony of Petitioner's representative).
4. There are also two dogs in the home, who can be locked in a separate room when people come over. (Testimony of Petitioner's Daughter-In-Law).
5. In December of 2022, Petitioner was found wandering outside of his home. (Exhibit C, page 2; Testimony of Petitioner's representative).
6. That was his only incident of elopement since moving in, and his son and daughter-in-law began arming an alarm so they would know if tried to leave again. (Exhibit C, page 1; Testimony of Petitioner's Daughter-In-Law).
7. On March 2, 2023, Respondent assessed Petitioner. (Exhibit C, pages 1-2).
8. On March 8, 2023, Respondent again assessed Petitioner. (Exhibit D, pages 1-6).
9. Respondent's Medical Director also reviewed medical records received from Petitioner's providers. (Exhibit E, page 1).
10. On March 24, 2023, Respondent sent Petitioner written notice that his request for enrollment in PACE had been denied. (Exhibit B, pages 1-2).
11. With respect to the reason for its decision, Respondent stated:

Family goals do not align with mission of PACE.  
PACE would not be able to provide services due to not being able to provide services in the home.

*Exhibit B, page 1*

12. While there was a specific line for it, Respondent did not check that Petitioner's request was denied because it determined that it "cannot safely care for [Petitioner] in the community." (Exhibit B, page 1).
13. On June 12, 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 1-11).

### **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 in general and eligibility for it specifically, the Medicaid Provider Manual (MPM) in place at the time of the decision in this case provided:

#### **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 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.

*MPM, January 1, 2023, version  
PACE Chapter, pages 1-2*

Here, as discussed above, Respondent denied Petitioner's request for enrollment in PACE 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 met that burden of proof and Respondent's decision must therefore be reversed.

As a preliminary matter, the undersigned Administrative Law Judge would note that all of Respondent's witnesses initially testified that Petitioner's request for enrollment was denied on the basis that, even if receiving services offered by Respondent, Petitioner was not capable of safely residing in the community without jeopardizing his health or safety.

However, while that was the testimony, that was not what the notice of action in this case provided and Respondent specifically did not check safety issues as a reason for the denial. Accordingly, to the extent that was Respondent's reason for the denial, Respondent failed to provide Petitioner with adequate notice of the adverse action.

Moreover, even if that basis for denial was properly before the undersigned Administrative Law Judge, Petitioner has sufficiently demonstrated that Respondent erred. Respondent's witnesses indicated their concerns for Petitioner given his diagnosis of dementia, which will only worsen over time, and his history of elopement. Nevertheless, as credibly and persuasively testified to by Petitioner's witnesses, Petitioner has only had one isolated incident of elopement since moving into his new home; his son and daughter-in-law subsequently began arming their alarm again, which would alert them if Petitioner tried to leave; and Petitioner can always be reassessed if and when he worsens.

Similarly, Petitioner has likewise demonstrated that Respondent erred to the extent it subsequently relied upon the reasons for denial actually identified in the notice. For example, while Respondent's witnesses and reports provided that there were violent dogs in Petitioner's home that would prevent Respondent from providing services there, Petitioner's daughter-in-law credibly testified that she and her husband never reported such a problem; they only stated that the dogs would have to be put in another locked room when people come over; and services can be provided in the home.

Finally, while Respondent's notice provided and its witnesses testified that denial is appropriate because Petitioner's family want to place him in a nursing home and their goals therefore "do not align with mission of PACE;" which is to enable participants to live in the community as long as medically and socially feasible, Respondent's position is unsupported by any evidence in the record and contradicted by Petitioner's witnesses' credible testimony that they too want Petitioner to remain in his home as long as possible. Additionally, even if Respondent's determination is accurate, being "aligned" with the mission of PACE is not an eligibility requirement for the program and cannot form the basis for a denial.

Accordingly, for the reasons discussed above, the undersigned Administrative Law Judge finds that Petitioner has met his burden of proving beyond a preponderance of the evidence that Respondent erred; the denial at issue in this case must be reversed; and Respondent must reassess Petitioner for enrollment in PACE.

**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 enrollment.

**IT IS THEREFORE ORDERED** that:

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