

ISSUE

Did Respondent properly deny Petitioner's request for aquatic exercise classes (therapy)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. PACE North is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS or Department) and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony.)**
- 2. Petitioner is a male Medicaid beneficiary who has been receiving services through PACE. (Exhibit A; Testimony.)**
- 3. Petitioner is diagnosed with quadriplegia, restless leg syndrome, thrombophilia, hypertension, insomnia, major depression in partial remission, neurogenic bladder, and deep vein thrombosis. (Exhibit A, p 4; Testimony.)**

4. On May 24, 2023, Petitioner requested aquatic exercise classes (therapy) because he believes that he has some progress yet to make even though he seems to have plateaued with physical therapy. (Exhibit A, pp 7-8; Testimony.)
5. On May 26, 2023, Petitioner presented at PACE North for an assessment following his request for aquatic exercise classes (therapy). (Exhibit A, pp 12-13; Testimony.) Petitioner was assessed by PACE's Physical Therapist, Recreational Therapist, Social Worker, and his Primary Care Provider. (Exhibit A, pp 12-13, 16-17.)
6. Following the assessment, Petitioner's request was reviewed by PACE's Interdisciplinary Team (IDT), which consisted of the PACE Center Manager, Certified Nursing Assistant, Dietician, Home Care Coordinator, Intake Coordinator, Social Worker, Occupational Therapist, Primary Care Physician, Physical Therapist, Recreational Therapist, and Registered Nurse. (Exhibit A, p 18.) The IDT team noted that Petitioner currently works with a land strength trainer at a local gym twice per week and utilizes an adaptive bike that uses both his arms and legs. It was also noted that Petitioner uses a stationary bike at the Assisted Living Facility where he lives and that he is currently at his physical baseline. It was further noted that Petitioner has access to recreational, social and leisure activities. (*Id.*)
7. Following the review, the IDT denied Petitioner's request determining that Petitioner was at his baseline physically and his needs were being met by other services. (*Id.*)
8. On May 26, 2023, PACE sent Petitioner an Adequate Action Notice: Denial of Service, denying the request for aquatic exercise classes (therapy). The Notice included Petitioner's appeal rights. (Exhibit A, pp 19-24; Testimony).
9. On June 20, 2023, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit 1)

CONCLUSIONS OF LAW

The Medical Assistance Program 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:

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 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

3.11 APPLICANT APPEALS

3.11.C. PACE SERVICES

Noncoverage or nonpayment of services by the PACE organization for a beneficiary enrolled in PACE is an adverse action. If the beneficiary and/or representative disagrees with the noncoverage or nonpayment of services by the PACE organization, they have the right to request an administrative hearing before an administrative law judge. Information regarding the appeal process may be found on the Michigan Administrative Hearing System (MAHS) website. (Refer to the Directory Appendix for website information.) The beneficiary may request continuation of the disputed service with the understanding that he may be liable for the cost of the disputed service if the determination is not made in his favor.

*Medicaid Provider Manual
Program of All-Inclusive Care for the Elderly Chapter
April 1, 2023, pp 1-2, 6*

Here, Petitioner requested aquatic exercise classes (therapy).

PACE's Quality Assurance Director (QAD) testified that on May 24, 2023, Petitioner requested aquatic exercise classes (therapy) indicating that believes he has some progress yet to make even though he seems to have plateaued with physical therapy. PACE's QAD indicated that on REDACTED 2023, Petitioner presented at PACE North for an assessment and Petitioner was assessed by PACE's Physical Therapist, Recreational Therapist, Social Worker, and his Primary Care Provider. PACE's QAD testified that following the assessment, Petitioner's request was reviewed by PACE's Interdisciplinary Team (IDT). PACE's QAD indicated that the IDT team noted that Petitioner currently works with a land strength trainer twice per week at a local gym and utilizes an adaptive bike that uses both his arms and legs. PACE's QAD indicated that it was also noted that Petitioner uses a stationary bike at the Assisted Living Facility where he lives and that he is at his physical baseline. PACE's QAD testified that the IDT further noted that Petitioner has access to recreational, social and leisure activities. PACE's QAD testified that following the review, the IDT denied Petitioner's request, determining that Petitioner was at his baseline physically and his needs were being met.

Petitioner testified that following his accident he was a paraplegic paralyzed from the neck down, but with work he can now walk short distances with a walker. Petitioner indicated that he is sick of hearing that he is at his baseline, and he wants to try to do everything possible to get better. Petitioner testified that while he has not tried water therapy he has heard about it and knows that it is available locally.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying his request for aquatic exercise classes (therapy). Based on the evidence presented, this Administrative Law Judge (AU) finds that Petitioner has failed to meet this burden of proof. Here, Respondent presented sufficient evidence that they properly and thoroughly assessed Petitioner's needs and determined that Petitioner's needs were being met with his current services. As noted, Petitioner currently works with a private trainer at a gym two times per week, which PACE therapists opined would be more beneficial to building Petitioner's strength than aquatic therapy. And, while it is understandable that Petitioner wishes to try everything possible to increase his strength and mobility, if the therapy is unlikely to improve Petitioner's condition, policy indicates that Medicaid cannot pay for the service. As such, Petitioner has failed to provide any evidence that aquatic exercise classes (therapy) are medically necessary.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to meet the burden of proof and that Respondent properly denied Petitioner's request for aquatic exercise classes (therapy).

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 an aquatic exercise classes (therapy).

IT IS THEREFORE ORDERED that:

The Respondent's decision is **AFFIRMED**.