

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 Medicaid beneficiary who has been enrolled as a PACE participant with Respondent since February of 2023. (Testimony of Nurse Practitioner).
3. She lives with her daughter and son-in-law and is totally dependent on others for her instrumental activities of daily living, maximal to totally dependent on others for her activities of daily living, and incontinent. (Exhibit C, pages 1, 22; Testimony of Social Worker).
4. In July of 2023, Petitioner's daughter reported being burned out from caring for Petitioner. (Testimony of Petitioner's representative).
5. She did not report any health problems for herself or other barriers to providing care at that time. (Testimony of Petitioner's representative).
6. In response, Respondent determined that Petitioner's attendance at Respondent's Day Center would be increased to 3 times a week; Petitioner would receive some home care services; and that Petitioner could stay at Linden Square, an assisted living facility, for a time in order to give Petitioner's daughter some respite. (Testimony of Petitioner's representative; Testimony of Social Worker; Testimony of Nurse Practitioner).
7. On August 3, 2023, while Petitioner was receiving the respite care, Petitioner's daughter requested that Petitioner be placed at the assistive living facility permanently due to caregiver burnout. (Exhibit B, pages 1-3).
8. She did not report any health problems for herself or other barriers to providing care at that time. (Testimony of Petitioner's representative).
9. On August 4, 2023, Respondent sent Petitioner written notice that the request for permanent placement had been denied. (Exhibit A, pages 2-3).

10. In part, that notice stated:

The reason for this action is based on additional home care and day center attendance being put in place to relieve caregiver burnout. The legal basis for this decision is 42 CFR Part 460.

Exhibit A, page 2

11. On August 10, 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 1-3).

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
- 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 in this case that Petitioner has significant mental and physical issues, and that Petitioner's daughter/representative has been providing substantial amounts of care to Petitioner and was reporting and experiencing, burnout when she and Petitioner requested that Petitioner be placed at an assistive living facility permanently.

Petitioner also credibly testified that she loves it at the assistive living facility, she hopes to stay, and that she does not want to be a burden on her family.

However, while Petitioner's daughter's burnout is undisputed and Petitioner may prefer to stay at the assistive living facility, Respondent properly found that such a permanent placement was not necessary and that, instead, Respondent could increase or provide other services, such as day center attendance, home care and respite, that would relieve Petitioner's daughter from daily stress and care demands. 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.

Moreover, while Petitioner's daughter testified during the hearing that it is not really burnout that prompted the request and, instead, it is her own health issues that will be preventing her from continuing to care for Petitioner, that testimony is unpersuasive. As discussed above, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made, and, here, Petitioner's daughter never told Respondent of her health issues; she only reported burnout; and Respondent properly responded to Petitioner's request based on the information it had.

To the extent Petitioner's representative has additional or updated information to report, or the additional supports proposed by Respondent prove to be insufficient, Petitioner and her 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**.