

ISSUE

Did Respondent properly terminate Petitioner's PACE services?

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 an REDACTED year-old Medicaid beneficiary who has been enrolled as a participant with Respondent since 2020. (Exhibit A, pages 3-4).

3. On September 11, 2020, MDHHS notified Respondent that Petitioner did not meet the Medicaid requirements for the PACE program due to Petitioner being over the income limits for the program. (Exhibit A, page 4).
4. On October 27, 2020, the Department notified Petitioner that he was no longer eligible for PACE services due to the Medicaid requirements. (Exhibit A, page 4).
5. Petitioner appealed that decision, and a State fair hearing was held on December 15, 2020. (Exhibit A, pages 3-4).
6. On January 22, 2021, Administrative Law Judge Corey Arendt issued a Decision and Order in which he affirmed the termination of Petitioner's PACE services. (Exhibit A, pages 3-9).
7. While that decision was affirmed, Respondent did not terminate Petitioner's services at that time due to the ongoing COVID-19 pandemic and a federal public emergency order. (Testimony of Petitioner's representative; Testimony of Respondent's representative).
8. In May of 2023, the federal public health emergency for COVID-19 ended. (Testimony of Respondent's representative).
9. On August 2, 2023, MDHHS again notified Respondent that the involuntary disenrollment of Petitioner was approved as of August 31, 2023, due to Petitioner being over the income limits for the program. (Testimony of Respondent's representative).
10. That same day, Respondent sent Petitioner written notice that, effective September 1, 2023, Petitioner's PACE services would be terminated. (Exhibit A, pages 10-12).
11. On August 14, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed with respect to that decision. (Exhibit #1, pages 1-3).¹

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

¹ During the hearing, Petitioner's representative stated that she had requested an expedited hearing and one was not provided. However, the request for hearing form in this case does not indicate any request for an expedited hearing (Exhibit #1) and MOAHR does not have any other record of receiving such a request.

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 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.

* * *

3.7.B. DISENROLLMENTS

Voluntary	A signed disenrollment form must be uploaded to CHAMPS.
Involuntary	Once the electronic form has been completed, PACE providers will submit appropriate supporting documentation to their MDHHS contract manager. MDHHS will review and approve or deny the electronic disenrollment in CHAMPS and determine the appropriate date of disenrollment.
Death	Providers will enter the date of death with the electronic disenrollment. A completed disenrollment will end-date the corresponding PET code.

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3.13 APPLICANT APPEALS

3.13.A. FINANCIAL ELIGIBILITY

A determination that an applicant is not financially eligible for Medicaid is an adverse action. Applicants may appeal to MDHHS. (Refer to the Directory Appendix for contact information.)

*MPM, July 1, 2023, version
PACE Chapter, pages 1, 3, 5, 7*

Here, Respondent terminated Petitioner's PACE pursuant to the above policies and on the basis that, as determined by MDHHS, Petitioner is not financially eligible for the PACE program.

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.

As clearly provided in the above policy, Petitioner must meet all applicable Medicaid financial eligibility requirements, with eligibility determinations made by MDHHS, to be eligible for PACE enrollment; and it is undisputed that Petitioner does not meet those requirements here.

As early as 2020, MDHHS determined that Petitioner was not financially eligible for the program, with Petitioner neither appealing that past decision nor disputing the current one, and it was only because of the public health emergency that he remained in PACE.

With the public health emergency lifted, Respondent must again enforce eligibility requirements and, given the financial eligibility determination by MDHHS and its express approval on August 2, 2023, of disenrollment after August 31, 2023, Respondent's actions were proper and must be affirmed.

Rather than disputing the disenrollment decision itself, Petitioner's representative and other witness testified regarding failures by Respondent in transitioning Petitioner out of PACE, with allegations of both miscommunications and the lack of assistance in helping Petitioner obtain reinstatement of conventional Medicaid and Medicare benefits; move to other providers; or expedite any appeals.² However, any such grievances are beyond the scope of this proceeding as the undersigned Administrative Law Judge is limited to reviewing the adverse action at issue, i.e., the termination of services. See 42 CFR 431.200 *et seq.*, 42 CFR 460.124.

Respondent is required to have a formal written process to resolve grievances, see 42 CFR 460.120, and Petitioner and his representative may pursue that if they wish. With respect to the issue in this case however, Respondent's actions must be affirmed.

² In particular, Petitioner cited to 42 CFR 460.52 in support of the argument that Respondent failed to comply with the law. However, that regulation applies to situations where a PACE agency's program agreement with the government is being terminated, which does not apply here.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly terminated Petitioner's PACE services.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.