

## **ISSUE**

Did Respondent properly deny Petitioner's request for placement in an assisted living facility (ALF)?

## **FINDINGS OF FACT**

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

1. Department 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 Medicaid beneficiary, who has a medical history consisting of the following:

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Abdominal wall hernia, Acquired absence of other left toe(s) -Y 189, Acquired absence of other right toe(s) -Y 189, Anemia associated with stage 3 chronic renal failure, Aortic Stenosis, Candidal Intertrigo, Chronic headache, Chronic headache, Chronic kidney disease, stage 3b, Chronic pain, Coronary artery disease, Daytime hypersomnolence, Degenerative disc disease, lumbar, Diabetes mellitus type 2, controlled, with complications -Y 18, Diabetes mellitus with neuropathy -Y 18,, Diabetes mellitus with peripheral artery disease -Y 18,108, Diabetic foot ulcer -Y 18,161, Diastolic heart failure -Y 85, Dysphagia, Edentulous, Esophagitis, Gastroparalysis due to secondary diabetes -Y 18,, GERD (gastroesophageal reflux disease) -N, Gout, Heart Valve Replacement, History of osteomyelitis, Hypercholesterolemia

– N, Hyperparathyroidism due to renal insufficiency -Y 23, Hypertension, Hypothyroidism, Acquired, Impaired Mobility, Iron deficiency anemia, unspecified, Major depressive disorder in partial remission -Y 58, Morbid obesity -Y 22, Non-pressure chronic ulcer of other part of left foot limited to breakdown of skin -Y 161, Osteoarthritis, Pacemaker, Persistent atrial fibrillation -Y 96, Restless leg syndrome, Urinary incontinence in female, UTI (urinary tract infection), Valvular heart disease, Vitamin B12 deficiency, and Vitamin D deficiency<sup>1</sup>

3. On May 26, 2023, a face-to-face assessment was conducted. During the assessment, Petitioner reported moving to REDACTED from REDACTED earlier in the month to be closer to her daughter. Petitioner also reported she had previously received daily homecare from Great Lakes PACE in REDACTED but had disenrolled after not being satisfied with their medical care. Petitioner reported no in-home supports since returning to REDACTED. (Exhibit A.)
4. On or around June 1, 2023, a participant goal was agreed to, wherein Petitioner indicated she would like to be able to get around better and continue living independently in her apartment with her cat, REDACTED. At this time, the Department determined Petitioner was eligible for the following:
  - 1.5 hours of home care per week for assistance with housekeeping and shopping
  - Personal Emergency Response System (PERS)
  - Incontinence products

<sup>1</sup> Exhibit A, p 8.

- Medication wheel for medication management
  - 7 home delivered meals per week
  - Coordinated medical care
  - Monthly clinic visits
  - 2-3 visits of skilled occupational therapy<sup>2</sup>
5. On July 25, 2023, Petitioner met with Department staff. During the meeting, Petitioner requested placement in an Assisted Living Facility. During the meeting, Petitioner indicated she needed assistance with Instrumental Activities of Daily Living but did not need assistance with Activities of Daily Living. Petitioner further indicated she goes to the center 3 days a week and is offered home care 2 times a week. Petitioner indicated she had anxiety from living alone and the fear of something bad happening without supervision. At this time, Department staff determined Petitioner did not have a medical need for placement as a result of a SLUMS score of 28 and Petitioner being capable of completing all of their ADLS along with the services PACE offered including the provision of assistance with IADLS. (Exhibit A.)
  6. On July 28, 2023, the Department sent Petitioner an Adequate Action Notice. The notice indicated Petitioner's request for Assisted Living Placement would be denied. The notice further indicated Petitioner's needs were being met through the current array of services being offered by PACE. (Exhibit A.)
  7. On August 16, 2023, the Department issued Petitioner a letter addressing Petitioner's internal appeal. The letter indicated Petitioner's request for Assisted Living Placement would be denied as a result of Petitioner's needs being able to be met through the PACE interventions and supports provided to Petitioner. (Exhibit A.)
  8. On or around August 24, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)

### **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

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<sup>2</sup> Exhibit A, p 41.

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.<sup>3</sup>

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only the denial of a particular service in dispute, with Petitioner requesting placement in an ALF and Respondent denying the request on the basis that other interventions can meet Petitioner's needs while keeping her in the community.

The Department's witness testified that Petitioner is able to complete her own ADL's and is able to continue to live in the community with PACE services. Department's witness also indicated Petitioner's primary fears are of being alone and the fear something bad may happen without supervision. Furthermore, the documentation provided by the Department indicates Petitioner, approximately a month prior to her request, indicated a goal of hers was to remain living in her apartment independently.

Petitioner's primary argument was she never received a face-to-face assessment in her home. The Petitioner, however, never provided a policy that would require such an assessment, and a review of the applicable policy was void of any requirement as well.

Furthermore, Petitioner never refuted the Department's statement that she was able to perform all of her ADL's independently.

As indicated above, PACE provides an alternative to traditional nursing facility care in order to "[e]nable frail, older adults to live in the community as long as medically and socially feasible"; and to be eligible for PACE enrollment, applicants must be "capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization." Here, Petitioner has failed to prove, by a preponderance of the evidence, that PACE erred in its determination. Upon Petitioner's request for ALF placement, PACE conducted comprehensive, in-person assessments of Petitioner.<sup>4</sup> These assessments concluded that Petitioner is safe to remain in the community with PACE services. A review of these assessments shows that despite Petitioner's serious medical conditions, Petitioner is independent in her ADL's and is doing fairly well with the services in place.

Consequently, based on the evidence presented, the Department's decision should be affirmed.

<sup>3</sup> Medicaid Provider Manual, Program of All-Inclusive Care for the Elderly, pp 1-3, July 1, 2023.

<sup>4</sup> See documents within Exhibit A.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Department properly denied Petitioner's request for placement in an assisted living facility.

**IT IS, THEREFORE, ORDERED** that:

Department's decision is **AFFIRMED**.