

ISSUE

Did the Department properly deny Petitioner's request for enrollment into the PACE program?

I The records from both proceedings were cross incorporated into one as both hearings involved the same general operative facts.

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. On or around March 16, 2023, the Department conducted a Nursing Facility Level of Care Determination (NFLOCD) and determined Petitioner qualified medically for Nursing Facility (NF) services entering through Door 2. (Exhibit A.)
3. On March 28, 2023, the Department sent Petitioner an Adequate Action Notice. The notice indicated Petitioner's request for enrollment was denied as PACE could not care for Petitioner safely in their home with PACE services. (Exhibit A.)
4. On June 19, 2023, Department staff met to discuss Petitioner's enrollment into the PACE program. During the meeting, it was indicated Petitioner was still living at Park Forest but at this time had two co-guardians assigned. It was noted Petitioner still had dishes stacked up and clutter, and it was evident PACE would continue to have issues like they had in the past with Petitioner denying/refusing services.² (Exhibit A.)
5. On June 28, 2023, Department staff met to further discuss Petitioner's enrollment. At this time, it was determined Petitioner still continued to do whatever she wanted even with guardians in place. The team determined a denial was appropriate because Petitioner was not safe in the community even with PACE services based on the tried and failed interventions provided during her previous enrollment that lasted 1 year and 7 months. And although Petitioner now has legal guardians in place, they cannot physically force Petitioner to accept the care she requires to remain safe in the community. (Exhibit A.)
6. On June 29, 2023, the Department sent Petitioner an Adequate Action Notice. The notice indicated Petitioner's request for PACE enrollment was denied as PACE cannot safely care for Petitioner in her home. (Exhibit A; Exhibit 1.)
7. In June of 2023, Petitioner had an open Adult Protective Services (APS) case opened for self-neglect. (Testimony.)

² Notes reflect Petitioner continued to have a history of cancelling medical appointments and refusing entry to staff.

8. On or around September 1, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)

9. On October 1, 2023, the Department sent Petitioner a second Adequate Action Notice. The notice indicated Petitioner's request for PACE enrollment was denied as PACE cannot safely care for Petitioner in her home. (Testimony.)

10. On or around October 13, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Hearing File.)

11. There is a past history of family support burnout. (Testimony.)

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 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.³

At issue in this case are two denials for PACE services as a result of the Department concluding Petitioner is incapable of safely residing in the community without jeopardizing health or safety while receiving services offered by the Department. In support of this decision, the Department provided evidence of a long history of Petitioner refusing care both prior to the placement of guardians and after, along with a recent history of APS involvement for self-neglect.

The Petitioner argued the placement of co-guardians should resolve the past issues affecting the Petitioner, and that together, they were certain the Petitioner could reside safely within the community by working collaboratively together.

The evidence presented, however, indicates that even if PACE were to again provide services, it was highly unlikely the Petitioner would be willing to accept those services. Although both the guardians and the Department have the greatest of intentions, there is nothing that requires the Petitioner to accept the services being offered; and even

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

with the placement of guardians, Petitioner is still having an issue of refusing services from providers including her own primary care physician.

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.

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

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 PACE services.

IT IS, THEREFORE, ORDERED that:

Department's decisions are AFFIRMED.