

ISSUE

Did Respondent properly deny Petitioner's request for additional home care services?¹

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 has been enrolled in PACE and receiving services through Respondent. (Testimony of Petitioner; Testimony of Home Care Coordinator).

¹Petitioner's request for hearing also indicated a dispute regarding her wheelchair. However, she also stated on the record at the onset of the hearing that her issue with her wheelchair has been resolved.

3. Previously, her services included three (3) days per week of home care services for assistance with housework and shopping. (Testimony of Petitioner; Testimony of Respondent's representative).
4. However, Petitioner was mostly completing her own housework and, in July of 2023, requested that all three days of assistance be used for shopping. (Testimony of Petitioner; Testimony of Respondent's representative).
5. Respondent denied that request. (Testimony of Petitioner; Testimony of Respondent's representative).
6. Respondent also reassessed Petitioner's home care needs and, by agreement of the parties, Petitioner's home care services were reduced to two (2) days per week. (Testimony of Petitioner; Testimony of Respondent's representative).
7. On REDACTED, 2023, Petitioner fell in her home. (Testimony of Home Care Manager).
8. Respondent reassessed Petitioner after that fall, and no changes were made with respect to her services. (Testimony of Petitioner; Home Care Coordinator).
9. On September 18, 2023, Petitioner requested that Respondent reapprove a third day of home care assistance. (Exhibit A, page 9).
10. Specifically, she reported that she is going without certain food items; her laundry is not coming back in a timely manner; and she wants her garbage taken out more than twice a week. (Exhibit A, page 10).
11. On September 19, 2023, Respondent's interdisciplinary team (IDT) met and discussed Petitioner's request. (Exhibit A, pages 9-11).
12. On September 20, 2023, Respondent sent Petitioner written notice that her request for an additional day of home care had been denied. (Exhibit A, pages 12-13).
13. With respect to the reason for the denial, the notice stated:

You currently get homecare twice per week on your preferred days (Mondays and Saturdays). You prefer and are able to do the majority of housekeeping tasks yourself, therefore a third day of homecare is not indicated.

14. On October 26, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit #1, pages 1-4).

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 applicable version of the Medicaid Provider Manual (MPM) provides in part:

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, July 1, 2023, version
PACE Chapter, pages 1-2
(Italics added for emphasis)*

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only the denial of her request for additional home care services that is in dispute.

In support of the decision to deny Petitioner's request, Respondent's representative testified regarding the history of Petitioner's case with Respondent; the request made for additional home care services in this case; and the reason for the denial of that request, which was due in part to the fact that Petitioner can get her shopping done on one day each week and Petitioner reported that she can complete most of her housework on her own.

Respondent's Home Care Coordinator testified regarding the assessment completed in response to Petitioner's request and the recommendation made to deny it. She also testified that Petitioner is approved for two days of assistance, with one day for assistance with housework and one day for assistance with shopping for groceries, but

that Petitioner has primarily been using both days for shopping, with some assistance with taking her trash out and laundry. She further testified that Petitioner's recent fall was taken into account, and that her housework needs can be met with one day per week.

In response, Petitioner testified that she requires three days a week for home care assistance because she needs shopping done twice a week and housework done on the other day. With respect to shopping specifically, Petitioner testified that she does not have the budget to get all her groceries at once, though she later agreed that she gets her check and food stamps once a month, and that the fresh fruits and vegetables she gets would go bad if she only got them once a week. Petitioner also testified that the assistance with shopping leaves her aides with no time for the assistance she needs with housework. Petitioner further testified that she was doing all of her own housework prior to her fall, but that she now needs help with it. According to Petitioner, Respondent is improperly trying to dictate how she uses her homecare hours.

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 Respondent's decision in light of the information available at the time the decision was made.

Given the record and available information in this case, Petitioner has failed to meet her burden of proof and Respondent's decision must therefore be affirmed.

Petitioner has a need for assistance, but Respondent appears to have taken all her needs into account and, to the extent Petitioner's current utilization is not working for her, she has failed to demonstrate that she needs an additional day of home care as opposed to just adjusting how she uses her current services. For example, while Petitioner testified that she does not have the budget to get all her groceries once a week, she also agreed that she gets her food stamps and check once a month, which means that there should be no issue between budgeting for one or two trips a week. Moreover, while Petitioner testified that she needs fresh fruits and vegetables every day, and that they cannot all be purchased at once because some will go bad, that testimony is unsupported by any evidence regarding her dietary needs or shopping practices. Similarly, while Petitioner testified that her housework needs have increased after her fall, that testimony is unsupported by any evidence and Petitioner has been approved for assistance with housework.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent's properly denied Petitioner's request for additional home care services.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.