

ISSUE

Did Respondent properly deny Petitioner's request for a power wheelchair?

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 Respondent's representative).
3. In August of 2023, Petitioner, who has been diagnosed with multiple sclerosis and utilizes both a hooyer lift and a wheelchair, moved into American House. (Exhibit A, page 1; Testimony of Petitioner's representative).
4. On August 24, 2023, soon after she moved in, Petitioner requested that Respondent provide her with a power wheelchair. (Exhibit A, page 1; Testimony of Petitioner's representative).
5. On August 25, 2023, therapists from Respondent assessed Petitioner. (Exhibit A, pages 1-3; Testimony of OT).
6. During that assessment, it was found that:

Staff transfers participant in and out of bed via hooyer lift. Participant has services by facility home care in place, including all ADL and IADL care, and escorts to and from dining room for meals.

* * *

Participant states that she wants to leave her room because she's bored. She expresses interest in attending activities such as bingo and feels that a power w/c would help her participate in those. When asked if she got out of bed today, she reported that she had not. When asked about meals, she states that they are delivered to her room. She demonstrates limited insight and decreased problem solving ability, which may limit safe use of power wheelchair.

* * *

At this time, participant is not utilizing what is available to her, as she is remaining in bed and having meals delivered, rather than having staff transfer her to w/c and take her to dining and activity room to interact with other residents.

Exhibit A, pages 1-2

7. Following that assessment, the OT made the following recommendation:

Rehab team recommends denial of request as participant has all necessary equipment and services in place to support her greatest level of independence and ability to socialize in her facility. At this time, participant is not utilizing what is available to her to address her concerns. Using a power wheelchair will not increase her level of independence in her home, or maintain or improve her overall health status

Exhibit A, page 2

8. On August 25, 2023, Respondent sent Petitioner written notice that her request for a power wheelchair had been denied. (Exhibit B, pages 1-4).

9. With respect to the reason for the denial, the notice stated:

Your interdisciplinary team denied your request. The reason for the denial is that the IDT recommends denial of the request as participant has all necessary equipment and services in place to support her greatest level of independence and ability to socialize in the facility. At this time, participant is not utilizing what is available to her to address her concerns. Using a power wheelchair will not increase her level of independence in her home or maintain or improve her overall health status.

Exhibit B, page 1

10. On November 15, 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 1-3).

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, 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 a power wheelchair that is in dispute.

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 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.

It is undisputed in this case that Petitioner is reliant on staff to meet her needs, including assistance with transferring in-and-out of her bed through the use of a hooyer lift and assistance with transportation through the use of manual wheelchair; and, assuming for the sake of argument that Petitioner could safely operate one, a power wheelchair could potentially increase her independence, even if she will always require assistance with transferring and other activities of daily living.

However, as found by Respondent, the record does not reflect that a power wheelchair would have increased Petitioner's independence or health at the time of the request in this case. For example, while Petitioner expressed being bored and wanting to attend activities, she did not require a power wheelchair to do so as she already had staff able to transport her to activities if she had wanted to go and was just not utilizing them. Similarly, Petitioner was choosing to have meals delivered to her room instead of being transported to the dining hall. Petitioner's current services needed to be utilized before it could be determined whether they are insufficient and if a power wheelchair is medically necessary.

Moreover, while Petitioner's representative testified that things have changed and Respondent may not have been able to assess Petitioner accurately given that

Petitioner had just arrived in the facility, with Petitioner taking a while to warm up to people and adjust to her surroundings, 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.

To the extent Petitioner's circumstances have changed or she and her representative have additional information to provide, then they can always request additional services or a power wheelchair again in the future. With respect to the issue in this case however, Respondent's decision is affirmed given the information available at the time.

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 a power wheelchair.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.