

ISSUE

Did Respondent properly deny Petitioner's request for additional home care 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.

I As indicated during the hearing, and for ease of reference, the undersigned Administrative Law Judge numbered Respondent's exhibit himself when admitting it.

2. Petitioner is an REDACTED year-old woman who has been diagnosed with, among other conditions, atherosclerosis of aorta; bipolar disorder; cervicalgia; chronic kidney disease; generalized anxiety disorder; hypothyroidism; low back pain; morbid obesity; obsessive-compulsive disorder; other chronic pain; post-traumatic stress disorder; and spinal stenosis. (Exhibit A, pages 11, 19-20).
3. Due to her diagnoses and need for assistance, Petitioner has been enrolled in PACE and receiving services through Respondent. (Exhibit A, page 11).
4. Prior to the request at issue in this case, her services through Respondent included three (3) days per week of home care services for assistance with personal care, meal preparation, medication cuing, laundry, housekeeping, and bathing. (Exhibit A, page 24; Testimony of Participant Care Manager).
5. In December of 2023, Petitioner requested that Respondent approve additional time for her home care services. (Testimony of Participant Care Manager).
6. On December 22, 2023, Respondent sent Petitioner written notice that her request for an additional day of home care had been denied. (Exhibit A, pages 3-10).
7. With respect to the reason for the denial, the notice stated:

[D]ue to PCA's not utilizing the time already given because ppt does not allow all tasks to be completed. Ppt was given a binder with tasks that were to be performed on each scheduled home care day with directions for the PCA's to complete after each visit. Staff explained to ppt that the PCA's would explain the tasks upon each visit and we would keep track of time used, to assist with task getting done completed,

Exhibit A, page 3

8. On January 24, 2024, 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 1-2).
9. After the request for hearing was filed, Respondent approved an additional thirty minutes of services per day. (Testimony of Participant Care Manager).

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, October 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 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.

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 home care as opposed to just adjusting how she uses her current services. For example, while Petitioner testified that not everything is being completed, she also testified that she is setting priorities different from what is scheduled; and her statements focused on a need for a

clearer schedule and greater flexibility than a need for more time. Similarly, Petitioner's friend primarily testified about a need for flexibility and for Petitioner's staff to be present for the entirety of the authorized time.

After the decision in this case, Petitioner was approved for more home care and, to the extent that increased amount is still insufficient for her and she has additional or updated information to provide regarding her need for services, she can always request more services again in the future along with that information. With respect to the decision at issue in this case however, Respondent's decision is affirmed given the record in this case.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.