

ISSUE

Did Respondent properly deny Petitioner's request for permanent placement?

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 is a REDACTED year-old Medicaid beneficiary who has been enrolled as a PACE participant with Respondent since REDACTED, 2023. (Exhibit A, page 10; Testimony of Petitioner's representative).
3. He has been diagnosed with, among other conditions, Alzheimer's disease, unspecified; altered mental state; chronic kidney disease; hypertension; major depressive disorder; type 2 diabetes; and unspecified dementia. (Exhibit A, pages 14-15).
4. Petitioner lives with his wife, who is his primary natural support, and Respondent has noted that she exhibits high caregiver strain. (Exhibit A, page 17; Testimony of Petitioner's representative; Testimony of Petitioner's daughter).
5. In his home, Petitioner requires around-the-clock supervision, and he has displayed, among other things, wandering and elopement; aggressive sexual advances to his wife; suicidal ideations; and other inappropriate behaviors, including waving a knife around and walking outside in just his incontinence underwear. (Exhibit A, pages 31-32; Testimony of Petitioner's representative).
6. Petitioner's wife also reports feeling unsafe herself and being worried about the safety of her neighbors. (Exhibit A, pages 31-32; Testimony of Petitioner's representative; Testimony of Social Worker).
7. In November of 2023, Petitioner's representative requested that Petitioner be approved for permanent placement in a facility. (Testimony of Social Worker).
8. Respondent's Interdisciplinary Team (IDT) reviewed that request and recommended that it be denied, with Petitioner's services to be increased. (Testimony of Social Worker).
9. On November 22, 2023, Respondent sent Petitioner written notice that the request for permanent placement had been denied on the basis that services in the community had not been fully exhausted and would be increased to help support Petitioner in the least restrictive environment. (Exhibit A, page 28).

10. Changes in Petitioner's services included a medication review and adjustment; an increase in day center attendance to five (5) days a week; the authorization of home care in the mornings on days Petitioner attends the day center; and an increase in his respite care services. (Exhibit A, pages 34, 39-40; Testimony of Center Manager).
11. In December of 2023, Petitioner's medications were adjusted, with a change in one medication and an increase in dosage of another. (Testimony of Center Manager).
12. Petitioner also received home care, but he and his wife were not initially comfortable with the staff, due in part to Petitioner's diagnoses, concerns about staff training, and switches in times and personnel. (Testimony of Petitioner's representative; Testimony of Social Worker).
13. Petitioner further attended the day center more, though some days were missed while he was receiving respite care or the center was closed due to the holidays. (Testimony of Center Manager).
14. Petitioner also received respite care out of the home, including a stay between REDACTED 2023 and REDACTED 2024, during which he had a fall. (Exhibit A, pages 34, 44-45).
15. On January 4, 2024, Petitioner's representative again requested that Petitioner be approved for permanent placement in a facility. (Exhibit A, pages 36, 46, 50).
16. At that time, she reported feeling great stress and being unable to get good sleep because of the demands of, and concerns about Petitioner's care. (Exhibit A, pages 36, 46).
17. It was also reported that the location where Petitioner had successfully received respite had an opening. (Exhibit A, page 46; Testimony of Petitioner's representative; Testimony of Petitioner's daughter)
18. Respondent's IDT then assessed the new request. (Exhibit A, pages 34, 38, 50, 52).
19. During that assessment, it determined that Petitioner's wife had severe caregiver burden. (Exhibit A, page 34).
20. However, it also determined that the new request for permanent placement should also be denied because not enough time had passed to determine if the increased interventions recently put in place would meet Petitioner's needs. (Exhibit A, pages 34, 38, 50, 52; Testimony of Social Worker).

21. On January 8, 2024, Respondent sent Petitioner written notice that the request for permanent placement had been denied. (Exhibit A, pages 2-9).

22. In part, that notice stated:

[Petitioner's] care team recently increased interventions to continue to support him in the least restrictive environment and there has not been enough time to determine if these have been beneficial. Team would like to trial an extended respite with medication adjustments and provide caregiver with resources before exploring permanent placement.

Exhibit A, page 2

23. On January 15, 2024, Petitioner filed an appeal with Respondent regarding that denial. (Exhibit A, page 30).

24. On February 6, 2024, Respondent sent Petitioner written notice that his appeal had also been denied. (Exhibit A, page 30).

25. In part, that notice stated:

The IAC unanimously agreed to uphold IDT's decision to deny permanent placement to allow time to determine if the interventions recently put in place will held reduce care giver burden and meet the participant's needs.

Exhibit A, page 30

26. On February 26, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter. (Exhibit #1, pages 1-7).

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, January 1, 2024, version
PACE Chapter, pages 1-2
(Italics added for emphasis)*

Here, as discussed above, Respondent denied Petitioner's request for permanent placement in an assistive living facility pursuant to the above policies.

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 the decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has not met that burden of proof and Respondent's decision must therefore be affirmed.

It is undisputed in this case that Petitioner has significant mental and physical issues, and that Petitioner's natural supports, especially his wife, have been providing substantial amounts of care to Petitioner. Moreover, it also appears undisputed that Petitioner's wife is experiencing great stress from caring for Petitioner and that the services provided after Petitioner's initial enrollment in PACE proved to be insufficient.

However, while those circumstances are undisputed, Respondent properly found that the requested permanent placement was not necessary at the time of the decision and that, instead, the parties should first determine if Petitioner's recently increased services could meet his needs out in the community. Such services included medication changes, with changes possibly taking weeks to have an effect; an increase to five days a week at Respondent's day center, which was not fully provided prior to the request due to holidays and Petitioner receiving respite; home care in the mornings, where there has been a transition period as Petitioner and his wife get comfortable with staff; and revolving respite.

The purpose of PACE is to enable people to live in the community as long as medically and socially feasible; and Petitioner cannot demonstrate that the additional supports authorized by Respondent are insufficient for Petitioner at this time.

To the extent Petitioner's circumstances have changed or the additional supports authorized by Respondent prove to be insufficient, Petitioner and his representative can always request a placement again in the future. With respect to the decision at issue in this case however, Respondent's decision must be affirmed given the available information and applicable policies.

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 permanent placement.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.