

ISSUE

Did Respondent properly deny Petitioner's request for short-term placement in a skilled nursing facility (SNF)?

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 was a REDACTED Medicaid and Medicare beneficiary, who received services through Respondent PACE. (Exhibit 1, p 11; Testimony)

¹ Petitioner's exhibits are also incorporated into Respondent's Exhibit 1.

3. Petitioner passed away on REDACTED (Exhibit 1, p 36; Testimony)
4. At the time of the denial, Petitioner had numerous diagnoses, including heart failure, history CVA (stroke), muscle weakness, panic disorder, brain tumor and dementia. (Exhibit 1, pp 15-16; Testimony.)
5. On REDACTED 2023, Petitioner was hospitalized with COVID, acute cystitis without hematuria, dementia, and urinary tract infection. (Exhibit 1, p 156; Testimony)
6. During the hospital stay, Petitioner's family requested that she be placed in a skilled nursing facility (SNF) upon discharge. (Exhibit 1, p 160; Testimony)
7. As of December 19, 2023 Respondent did not approve long-term placement in a SNF but did agree that a short-term placement in a SNF would be beneficial to Petitioner for rehabilitation purposes. (Exhibit 1, p 162; Testimony)
8. On December 21, 2023 Respondent changed course and now determined that Petitioner had improved enough to be discharged to an Adult Foster Care (AFC) home instead of a SNF. (Exhibit 1, pp 164-165; Testimony.) The reason for this change was that one of Respondent's RN's viewed Petitioner get out of bed in the hospital with a one-person assist, as opposed to the two-person assist she previously required, during a hospital physical therapy (PT) assessment. (*Id.*)
9. Petitioner's daughter, who was also present for this assessment, testified that it took to 2-3 people to transfer Petitioner as she had no use of her right leg or arm at the time. (Testimony)
10. On December 22, 2023 Respondent PACE issued an Advance Action Notice notifying Petitioner and her family that the request for Petitioner's short-term placement in a SNF had been denied based on the above information. Specifically, the notice indicated "REDACTED's current care needs can be met at an AFC with SCPP providing therapy." (Exhibit 1, pp 3-10; Testimony)
11. On December 23, 2023 Petitioner's daughter requested an internal appeal. (Exhibit 1, p 29; Testimony)
12. On December 23, 2023 the Internal Appeal Committee (IAC) upheld the decision to deny Petitioner's short-term SNF placement. The IAC concluded, in part, "The IAC unanimously agreed to uphold IDT's decision to deny short-term placement at a skilled nursing facility because the level of care that the participant needed at the time could have been met [in] an assisted living facility where she would have continued receiving therapy services through SCPP.

Additionally, PACE's mission is to help keep participants in the community as long as medically and socially possible." (Exhibit 1, pp 29-31; Testimony)

13. Petitioner was ultimately discharged to a SNF at the family's insistence. (Exhibit 1, p 40; Testimony.) Petitioner declined rapidly and died on REDACTED (Exhibits, Q, R, S, T, U, V, W, X, Y, and Z.)
14. On April 10, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's Request for Hearing. (Exhibit A, pp 33-135)

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.

*Medicaid Provider
Manual PACE Chapter
October 1, 2023, pp 1-3
Emphasis added*

Here, Respondent initially approved Petitioner's short-term placement in a SNF, but changed course following an in-person assessment conducted by hospital staff in Petitioner's hospital room on December 21, 2023.

Petitioner argues that a short-term placement in a SNF was necessary given the declining nature of Petitioner's physical and mental condition during her hospitalization.

Respondent argues that short-term placement in a SNF was not necessary due to the physical improvements Petitioner made during her hospital stay.

Given the above findings of fact and applicable policies, the undersigned Administrative Law Judge (ALJ) finds that Petitioner has proven, by a preponderance of the evidence, that Respondent erred in denying short-term placement in a SNF upon Petitioner's discharge from the hospital.

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."

However, policy also provides, "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: . . . Emergency room services, acute inpatient hospital and nursing facility care when necessary."

Here, it is clear from the evidence that Respondent's decision was based either entirely, or almost entirely, on a physical therapy assessment conducted in Petitioner's hospital room on December 21, 2023. During this assessment, Petitioner was allegedly able to transfer from her bed with a one person assist as opposed to the two person assist she required previously. Petitioner's daughter, who was also present for this assessment, testified that it took to 2-3 people to transfer Petitioner during the assessment as she had no use of her right leg or arm at the time. There is no report from the hospital in this record of the assessment on December 21, 2023 or the hospital's findings after this assessment. And, in an assessment one day earlier, on December 20, 2023 the hospital's occupational therapist determined that Petitioner still needed a two-person assist. (Exhibit 1, p 100.)

Given the above, this ALJ finds that it is more likely than not that Petitioner still needed a two person assist on December 21, 2023. Because this was the main basis for Respondent's findings, those findings were in error and must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent improperly denied Petitioner's request for short-term placement in a SNF.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **REVERSED**.