

## ISSUE

Did Respondent properly deny Petitioner's request for a power mobility device through the Program of All-Inclusive Care for the Elderly (PACE)?

### FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. PACE is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS or Department) and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony).
2. Petitioner is an adult REDACTED who has been receiving services through PACE. (Exhibit A; Testimony).
3. PACE received a request from Petitioner for a power mobility device. (Exhibit A, pp 3-5; Testimony)
4. On March 28, 2024, PACE's occupational therapist (OT) completed a power mobility device assessment. Following the assessment, PACE's OT

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recommended that Petitioner's request for a power mobility device be denied. Specifically, PACE's OT concluded:

With current symptoms of dizziness and blurred vision, operation of a power mobility device would be unsafe. Additionally, you are able to safely walk with your walker therefore a power mobility device is not indicated. Occupational therapy continues to recommend utilizing the outdoor tether to let your dog out. (Exhibit A, p 4; Testimony)

5. On March 29, 2024, PACE sent Petitioner an Adequate Action Notice Denial of Service informing Petitioner that the request for a power mobility device was denied. (Exhibit A, pp 16-22; Testimony)
6. On March 29, 2024, PACE received Petitioner's request for an internal appeal. (Exhibit A, p 23; Testimony)
7. On April 16, 2024, after a review by an independent appeals committee, PACE notified Petitioner in writing that the committee was upholding the decision of the IDT to deny Petitioner a power mobility device. (Exhibit A, p 25-30; Testimony)
8. On April 29, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing. (Exhibit A, pp 31-32).

### CONCLUSIONS OF LAW

The Medical Assistance Program 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:

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 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

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### **3.13 APPLICANT APPEALS**

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#### **3.13.C. PACE SERVICES**

Noncoverage or nonpayment of services by the PACE organization for a beneficiary enrolled in PACE is an adverse action. If the beneficiary and/or representative disagrees with the noncoverage or nonpayment of services by the PACE organization, they have the right to request an administrative hearing before an administrative law judge. Information regarding the appeal process may be found on the MOAHR website. (Refer to the Directory Appendix for website information.)

The beneficiary may request continuation of the disputed service with the understanding that he may be liable for the cost of the disputed service if the determination is not made in his favor.

*Medicaid Provider Manual  
Program of All-Inclusive Care for the Elderly Chapter  
January 1, 2024, pp 1-2, 7*

With regard to medical necessity, the Medicaid Provider Manual indicates:

## 2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

### 2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

### 2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary;

- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning;
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience;
- Made within federal and state standards for timeliness;
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose; and
- Documented in the individual plan of service.

#### **2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP**

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary;
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner;
- Responsive to the particular needs of beneficiaries with sensory or mobility **impairments** and provided with the necessary accommodations;
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

## 2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services:
  - that are deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
  - that are experimental or investigational in nature; or
  - for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or
- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

*Medicaid Provider Manual  
Mental Health/Substance Abuse Chapter  
January 1, 2023, pp 13-14*

With regard to power mobility devices, the Medicaid Provider Manual provides:

Power Wheelchair or Power-Operated Vehicle (POV) in Both Community Residential and Institutional Residential Settings

May be covered if the beneficiary meets all of the following:

- Lacks ability to propel a manual wheelchair, or has a medical condition that would be compromised by propelling a manual wheelchair, for at least 60 feet over hard, smooth, or carpeted surfaces with or without rest intervals.
- Requires use of a wheelchair for at least four hours throughout the day.
- Is able to safely operate, control and maneuver the wheelchair in their environmental setting, including through doorways and over thresholds up to 1%", as appropriate.

- Has a cognitive, functional level that permits safe operation of a power mobility device with or without training.
- Has visual acuity that permits safe operation of a power mobility device.
- For a three-wheeled power mobility device, has sufficient trunk control and balance.

*Medicaid Provider Manual  
Medical Supplier Chapter  
January 1, 2023, p 110*

PACE's Quality and Compliance Analyst (QCA) testified that the IDT reviewed Petitioner's request for a power mobility device and decided not to approve it because it would be unsafe for Petitioner to operate a power mobility device because of her dizziness/blurred vision. PACE's QCA also noted that the IDT denied the request because Petitioner can safely walk with her walker and has alternative options for toileting her dog. PACE's QCA also noted that Petitioner's internal appeal went through an independent review committee consisting of persons outside the PACE organization, who upheld the denial.

Petitioner testified that she has had a rider before and it was really good. Petitioner indicated that her nurse practitioner recently removed some of her medications so she is no longer dizzy and has not fallen since. Petitioner indicated that she currently has a fractured back, shoulder and two fingers due to an incident where a door fell on top of her. Petitioner testified that her neighbors used to walk her dog but have indicated they will not do so anymore. Petitioner indicated that the neighbors also spoiled her dog by walking the dog so far. Petitioner testified that a neighbor let her use her power scooter for a while, but it pulled to the left and was unsafe. Petitioner indicated that she cannot use a tether to let her dog out in her own yard because her dog will not toilet in Petitioner's yard.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying her request for a power mobility device. Based on the above evidence presented, this Administrative Law Judge finds that Petitioner has failed to meet this burden of proof.

According to the above policy, power mobility devices are approved only if they will help with ADLs in the home. Here, Petitioner is requesting the power mobility device to walk her dog outside of the home. While it is understandable that Petitioner would like more independence, such use of a power mobility device is not supported by policy. Furthermore, Petitioner is ineligible for a power mobility device because she is mobile using her walker. Also, it does appear that it would be unsafe for Petitioner to operate a power mobility device due to her past dizziness, blurred vision, and falls.

In addition, Petitioner does have other options for toileting her dog, including letting the dog out in the back yard on a tether. Presumably, the dog will toilet in the back yard eventually if that is the only option.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to prove, by a preponderance of the evidence, that Respondent's denial was improper.

#### DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that Respondent properly denied Petitioner's request for a power mobility device.

IT IS THEREFORE ORDERED that: