

## **ISSUE**

Did Department 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) and oversees PACE in Petitioner's geographical area.

2. Petitioner is Medicaid beneficiary 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)
3. Due to her diagnoses and need for assistance, Petitioner has been enrolled in PACE and receiving services through Respondent. (Exhibit A.)
4. On or around June 5, 2024, Petitioner requested additional home care services. (Exhibit A; Testimony.)
5. On June 5, 2024, the Department's Occupational Therapist conducted an assessment with Petitioner to determine whether additional services were medically necessary. (Exhibit A; Testimony.)
6. During the assessment, Petitioner indicated she wanted more time because the current staff does not have enough time and specifically requested time to allow the staff to do the dishes and clean the toilet that she would have time to clean out the boxes from the shower stall and around the bed. Petitioner reiterated that no one was to touch the boxes or try to declutter. Petitioner's home was observed to be cluttered with narrow pathways from the interior entrance to the fridge, toilet and to the right side of Petitioner's bed. Petitioner was observed to demonstrate sufficient strength and endurance to manage many adl tasks on her own including simple meal preparation, washing dishes, putting dishes away, sponge bathing, wiping down counters and refrigerator, filling water bottles and placing in fridge. Petitioner also demonstrated sufficient strength and range of motion to complete necessary tasks using energy conservation techniques and by pacing herself. (Exhibit A; Testimony.)
7. Following the assessment, the Department's Occupational Therapist determined the following tasks can be worked into a twice a week schedule: bringing food from community fridge to apartment; sign in on forms; collect laundry that Petitioner has gathered and put into washing machine; remind Petitioner to take blood pressure and write down reading; remind Petitioner to take medications, clean kitchen sink, sweep/mop open hard flooring, check laundry, wash Petitioner's hair, clean toilet and sink if asked, wash dishes/containers and set in drainer to dry, fill water bottles, grind food, and sign out. It was also recommended to remove bathing and changing bed linens due to inaccessibility of shower and Petitioner's refusal to sponge bathe, and the unsafe ergonomics required to access bed. (Exhibit A; Testimony.)
8. On June 10, 2024, the Department sent Petitioner an Advance Negative Action Notice. The notice indicated Petitioners request for an extension of home hours was denied. (Exhibit A; Testimony.)

9. On July 15, 2024, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Exhibit A; Testimony.)

## 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<sup>1</sup>

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 Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing Department'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 Department's decision must therefore be affirmed.

The evidence indicates Petitioner has a need for assistance and that the current allocation is sufficient to meet Petitioner's needs. While Petitioner has indicated additional time is needed, they failed to indicate how the additional time would or should

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<sup>1</sup> Medicaid Provider Manual, PACE, October 1, 2023, pp 1-2.

be utilized. Furthermore, the Petitioner indicated that currently less time is being provided than what is being authorized and further pointed to the issue actually being with the unfulfilled allocation. This being the case, Petitioner is encouraged to work more closely with the Department to ensure that all of the hours being allocated are being fully utilized.

With respect to the decision at issue in this case; however, Department'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 Department properly denied Petitioner's request for additional home care services.

**IT IS, THEREFORE, ORDERED** that:

Department's decision is **AFFIRMED**.