

## **ISSUE**

Did the Department properly deny Petitioner's request for Adult Foster Care (AFC) 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. On April 15, 2024, the Petitioner participated in an in-take assessment. During the assessment, it was reported Petitioner was independent with most activities of daily living; but that she didn't fully clean up after a bowel movement and needed help to assist. (Exhibit A.)

2. During an initial social work assessment, Petitioner indicated a strong urge to remain in the community. (Exhibit A.)
3. On May 1, 2024, Petitioner enrolled with PACE. (Testimony.)
4. From REDACTED 2024, through REDACTED REDACTED 2024, Petitioner was discharged to her sister's home. (Testimony.)
5. On or around May 8, 2024, Petitioner was approved for home care, transportation, day center attendance, physical therapy and occupational therapy. (Exhibit A; Testimony.)
6. On June 17, 2024, the Department met with Petitioner and Petitioner's family. During the meeting, Petitioner's sister (informal support) indicated she was burnt out. Petitioner's sister further provided that 5 days of day enter and respite would be helpful interventions to reduce burn out. (Exhibit A; Testimony.)
7. On June 18, 2024, the Department approved 4 days of day center attendance and 1 week of respite. (Exhibit A; Testimony.)
8. On July 17, 2024, the Department met with Petitioner and Petitioner's family following Petitioner's refusal to return to her sister's home. During the meeting, Petitioner's sister and family reported an inability to care for Petitioner and further inquired into placement at an AFC home. (Exhibit A; Testimony.)
10. On July 19, 2024, the Department sent Petitioner an Adequate Action Notice. The notice indicated Petitioner's request for AFC placement was denied. The notice indicated specifically:

IDT Denies this request for permanent placement as available interventions have not been exhausted to keep Participant safe in the community.

IDT recommends Participant live in the community with PACE services, including Home Care and Day Center attendance and a weekend Respite per month. These interventions will address the Participant biopsychosocial needs best as she is able to perform activities of daily living in the community.

Additionally, her emotional, social, and mental well-being is best supported when living in the community and attending the Day Center for socialization, oversight and activities.'

11. On July 24, 2024, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Exhibit A.)

### 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.

Effective November 1, 2004, the Michigan Department of Health and Human Services (MDHHS) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria. Nursing facility residents must also meet Pre-Admission Screening/Annual Resident Review requirements. The Medicaid Provider Manual, Coverages and Limitations Chapter, Nursing Facilities Section, lists the policy for admission and continued eligibility process as well as outlines functional/medical criteria requirements for Medicaid-reimbursed nursing facility, MIChoice, and PACE services.

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.

---

<sup>1</sup> Exhibit A, p 8.

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.)

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.<sup>2</sup>

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as "medical assistance" under its plan, home and community-based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded] and is reimbursable under the State Plan.<sup>3</sup>

The CFR's places certain requirements and limits on medical assistance programs and states that a Medicaid agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.<sup>4</sup>

Home and community-based services means services not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter.<sup>5</sup>

---

<sup>2</sup> Medicaid Provider Manual, Program of All-Inclusive Care for the Elderly, April 1, 2024, p 1.

<sup>3</sup> 42 CFR 430.25(c)(2).

<sup>4</sup> 42 CFR 440.230.

<sup>5</sup> 42 CFR 440.180(a).

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.<sup>6</sup>

The Department is the responsible party who is assigned with the responsibility to determine the "amount, scope and duration of service provision based on the clinical observations of the enrollee's needs during the face-to-face Personal Care Assessment."<sup>7</sup>

In this case, the Petitioner has the burden of proof and must establish that placement in an AFC home is medically necessary to prevent institutionalization of Petitioner. In this case, the Petitioner has failed to meet that burden.

Petitioner is a recent enrollee with the PACE program who has not yet fully utilized the array of services that are being offered to Petitioner. While I can sympathize with the complaints alleged in the documentation provided, the PACE program has continued to look for ways to relieve the burdens placed on Petitioner's family by continuing to look for and offer solutions to lessen that burden. In this case, the family complained of burnout; and the solution was to offer additional day program attendance, home care, and respite two weekends a month. Petitioner's family utilized one of those respite periods and decided the services were insufficient to meet their needs and immediately requested placement in an AFC home.

Based upon the evidence presented, I find the Department acted appropriately in denying Petitioner's request for AFC home placement. As a result, the Department's decision should be affirmed.

---

<sup>6</sup> 42 CFR 440.180(b).

MDHHS Minimum Operating Standards for the MI Health Link Program an MI Health Link HCBS Waiver. January 1, 2018.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department correctly determined that the Petitioner lacks the medical necessity requirements for AFC home placement.

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

The Department's decision is **AFFIRMED**.