

## **ISSUE**

**Did Department properly deny Petitioner's request for placement at Allegan County Medical Care Community (ACMCC)?**

## **FINDINGS OF FACT**

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

- 1. Department is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS) and oversees PACE in Petitioner's geographical area.**

2. On April 1, 2022, Petitioner enrolled with Department. (Exhibit A.)
3. Department's Enrollment Agreement provides "[s]hould you provide notice to voluntarily disenroll, the disenrollment will be effective on the first day of the month after Life Circles receives the notice. . . . PACE services will continue until the effective date of disenrollment. . . Even though you have requested disenrollment, you must still get all routine services from Life Circles medical providers until the effective date of your disenrollment."<sup>1</sup>
4. On May 9, 2024, Petitioner underwent an OBRA assessment by the Michigan Department of Health and Human Services and was approved for Nursing Facility services at ACMCC. (Exhibit 1.) The purpose of the OBRA assessment was to:
  - Assure nursing home level of care is the Least restrictive environment capable of meeting an individual's care needs.
  - To assure the Nursing facility is able to manage an individual's mental health and behavioral health needs.
  - To assure Medicaid payment to the Nursing facility.<sup>2</sup>
5. On May 13, 2024, Petitioner requested Department to approve ACMCC until disenrollment at the end of the month. (Exhibit A.)
6. On May 15, 2024, Petitioner signed a voluntary disenrollment form disenrolling from Department. (Exhibit A.)
7. On May 15, 2024, Department denied Petitioner's request as they concluded Petitioner does not need skilled nursing facility level of care and ACMCC is not in the contracted network of providers. (Exhibit A.)
8. On May 16, 2024, Department sent Petitioner notification of the denial. (Exhibit A.)
9. On August 21, 2024, The Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Hearing File.)

#### 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.

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<sup>1</sup> Exhibit A, p 53.

<sup>2</sup> Exhibit 1, p 20.

42 CFR Part 460 addresses the PACE program and provides the following:

§460.70 Contracted Services.

- (a) **General rule.** The PACE organization must have a written contract with each outside organization, agency, or individual that furnishes administrative or care-related services not furnished directly by the PACE organization, including, at a minimum, the medical specialties identified in paragraph (a)(1) of this section. The PACE organization does not need to have a written contract with entities that provide emergency services described in §460.100.

§460.90 PACE benefits under Medicare and Medicaid.

If a Medicare beneficiary or Medicaid beneficiary chooses to enroll in a PACE program, the following conditions apply:

- (a) Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, copayments, coinsurance, or other cost-sharing do not apply.

**(b) The participant, while enrolled in PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization.**

§460.162 Voluntary disenrollment.

- (a) **Effective date.** A participant's voluntary disenrollment is effective on the first day of the month following the date the PACE organization receives the participant's notice of voluntary disenrollment.

Here, as discussed above, the Department denied Petitioner's transfer to ACMCC following a request by Petitioner, after they determined Petitioner's needs could be met in a less restrictive setting and further that Petitioners' needs did not rise to the level of care provided in a skilled nursing facility. Additionally, the Department also denied the request as ACMCC was not a contracted provider.

Petitioner argued they were not informed of the disenrollment dates, and further that they should not be responsible for the fees associated with Petitioner's stay at ACMCC following their disenrollment request on May 15, 2024, and continuing until the date of disenrollment on June 1, 2024.

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 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 the Department's decision must therefore be affirmed.

The policy regarding voluntary disenrollment is very clear, in that it does not occur until the first day of the month following the date the "PACE organization receives the participant's notice of voluntary disenrollment."<sup>3</sup> Consequently, based on this policy, the date of disenrollment would be June 1, 2024. The relevant policy goes on to indicate that participants "enrolled in PACE, must receive their Medicaid benefits solely through the PACE organization."<sup>4</sup> So from May 14, 2024, and continuing until June 1, 2024, the Department was responsible for providing all Medicaid benefits to Petitioner. That brings us to §460.70 which addresses contracted services. §460.70 requires "the PACE organization" to "have a written contract with each outside organization, agency, or individual that furnishes administrative or care-related services not furnished directly by the PACE organization".<sup>5</sup> In this case, the Department did not have a contract with ACMCC. As a result, the Department was required per policy to deny the Petitioner's request.

Problematic for this case, is the OBRA assessment and Petitioner's rush to move Petitioner into ACMCC without going through the process of identifying additional skilled nursing facilities that were in-network. According to the OBRA assessment, Petitioner was determined to be in need of "nursing home level of care".<sup>6</sup> There was no record though of this information being provided to the Department. Additionally, Petitioner should have waited to move Petitioner into ACMCC prior to fully discussing the issue with the Department and determining whether there were alternative skilled nursing facilities that were in-network.

Consequently, I find sufficient evidence to affirm the Departments decision to deny Petitioner's request for placement at ACMCC

#### **DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's request for placement.

**IT IS THEREFORE ORDERED that:**

**Department's decision is AFFIRMED.**