

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: May 18, 2020
MOAHR Docket No.: 19-013172
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's December 26, 2019, hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 460.2 *et seq.*; 42 CFR 431.200 *et seq.*; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 12, 2020.

Petitioner's authorized hearing representative, [REDACTED], appeared on Petitioner's behalf. Respondent, Thome PACE, had Robin Abbey-Hardesty, Center Manager, Angela Edward, Social Worker, and Deborah Johnson, Occupational Therapist, appear as its representatives. Neither party had any additional witnesses.

The hearing in this matter was consolidated with the hearing in the matter of Petitioner's spouse, [REDACTED], Docket No. 19-013171. Two exhibits were admitted into evidence during the hearing. A 49-page packet of documents provided by Respondent in Docket No. 19-013172 was admitted collectively as Exhibit A, and a 46-page packet of documents provided by Respondent in Docket No. 19-013171 was admitted collectively as Exhibit B.

ISSUE

Did Respondent properly deny Petitioner's request for permanent placement in a nursing facility?

FINDINGS OF FACT

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

1. Petitioner is enrolled to receive services through Respondent.

2. Respondent is a service provider through the Program of All-Inclusive Care for the Elderly (PACE).
3. Petitioner lives with his spouse, [REDACTED]. Petitioner's spouse is also enrolled to receive services through Respondent.
4. On November 18, 2019, Petitioner's daughter/power of attorney and son requested that Respondent permanently place Petitioner and his spouse in a nursing facility, [REDACTED], because they are not safe in their home.
5. Respondent conducted a face-to-face assessment of Petitioner.
6. While at Respondent's day health center, Respondent had Petitioner's family leave to see how they would do. Respondent observed Petitioner for approximately 90 minutes during which time Respondent did not note any concerns or behaviors.
7. During Respondent's assessment, Respondent noted that: (a) Petitioner recently had a toe amputated; (b) as a result of the amputation, Petitioner requires additional services with some of his instrumental activities of daily living (IADL's); (c) Petitioner remains able to complete all activities of daily living (ADL's) independently; (d) Petitioner is still functionally capable of living in his home; (e) Petitioner would like to remain in his home; and (f) the most effective way to provide services for Petitioner would be to increase his services to keep him in his home as long as possible.
8. Petitioner's interdisciplinary team (IDT) reviewed Petitioner's request and assessment. Based upon the review, Petitioner's IDT decided to deny the request for permanent placement in a nursing facility.
9. On November 21, 2019, Respondent mailed a notice of denial to Petitioner's daughter to notify her that her request for permanent placement in a nursing facility was denied.
10. On November 22, 2019, Petitioner's IDT met to discuss additional services that should be provided to keep Petitioner in his home. They discussed (a) having Petitioner and his spouse come in to the day health center on Monday, Wednesday, and Friday; (b) changing Petitioner's medication dispensers from blister packs to medication boxes to make it easier to administer medications; (c) educating Petitioner to make calls for assistance when his spouse needs assistance with bowel changes; (d) talking about brief alternatives for Petitioner's spouse to address bowel issues; (e) providing a home health companion to provide meal preparation and to check on medications; and (f) suggesting to family that they add a lock to the basement door to prevent anyone from going down the basement stairs.

11. On December 20, 2019, Petitioner's daughter appealed Respondent's November 21, 2019, denial.
12. Respondent forwarded Petitioner's internal appeal to its impartial third party, Huron Valley PACE, for a review.
13. Huron Valley PACE reviewed Petitioner's internal appeal and determined that Petitioner's IDT acted appropriately when it denied the request for permanent placement in a nursing facility.
14. On December 24, 2019, Respondent mailed a notice to Petitioner's daughter to notify her that her internal appeal was reviewed and Respondent's decision to deny the request for permanent placement in a nursing facility was upheld.
15. On December 26, 2019, Petitioner's daughter requested a hearing to dispute Respondent's December 24, 2019, notice.

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Petitioner is receiving services through PACE, a program that provides comprehensive care for older adults through Medicaid and Medicare to enhance their quality of life, maximize dignity and respect for them, enable them to live in their community as long as socially feasible, and preserve and support their families. 42 CFR 460.4(b). PACE services provide an alternative to traditional nursing facility care. *MDHHS Medicaid Provider Manual* (October 1, 2019), Program of All-Inclusive Care for the Elderly Chapter, Section 1, p. 1. When an individual enrolls in PACE, PACE becomes the sole source of services for Medicaid and Medicare for the individual. *Id.* at Section 2, p. 2. Petitioner enrolled in PACE, and Respondent is Petitioner's PACE service provider.

In this case, Petitioner is disputing Respondent's decision to deny his request for permanent placement in a nursing facility. Petitioner has not presented sufficient evidence to establish by a preponderance of the evidence that Respondent's decision was improper. Therefore, Respondent's decision must be affirmed.

The purpose of a PACE organization such as Respondent is to provide an alternative to traditional permanent placement in a nursing facility. Therefore, Respondent's objective is essentially to do everything it can to keep Petitioner from being placed in a nursing facility. Respondent presented sufficient evidence to establish that it is able to provide services to keep Petitioner in his home. Petitioner is able to complete his ADL's independently, Petitioner is able to complete most of his IADL's independently, and

Respondent is able to assist Petitioner with those IADL's that he cannot complete independently. Petitioner's evidence was insufficient to rebut Respondent's.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for permanent placement in a nursing facility.

IT IS ORDERED that Respondent's decision is **AFFIRMED**.

JK/dh



Jeffrey Kemm
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Roxanne Perry
400 S Pine St
Capitol Commons
Lansing, MI 48909

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

DHHS Department Rep.

Mary Naber
24463 W. Ten Mile Rd.
Southfield, MI 48033

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Community Health Rep

Thome PACE
Attn: Susan Decker, Executive Director
2282 Springport Rd.
Jackson, MI 49202