



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: May 19, 2020
MOAHR Docket No.: 20-000003
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on May 12, 2020. Petitioner appeared on her own behalf.¹ Mandy Bozell, Compliance and Privacy Specialist, appeared on behalf of PACE Senior-Care Partners, Respondent (Department). Whitney Ward, Social Worker; Cassandra Jennings, Occupational Therapist; and Peter Vanderweide, Physical Therapist, appeared as witnesses for Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Program of All-Inclusive Care for the Elderly (PACE) organization properly deny Petitioner's request for continued Temporary 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. Department is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS) and oversees the PACE program in Petitioner's geographical area.

¹ [REDACTED] Petitioner's sister and Authorized Hearing Representative had formerly represented Petitioner. At the time of the hearing, Petitioner indicated her sister was no longer representing her.

2. Petitioner is an ongoing participant with Department.
3. In November 2019, Petitioner was placed by Department with an Adult Foster Care (AFC) facility for medication adherence and to monitor seizures. The placement was primarily for temporary rehabilitation purposes. (Exhibit A, p 32; Testimony.)
4. On December 6, 2019, Petitioner requested a continuance for the short-term placement. (Testimony.)
5. On December 9, 2019, a face-to-face assessment took place. Following the assessment, it was determined Petitioner could perform her Activities of Daily Living without hands on assistance and was back to a preplacement baseline. (Testimony.)
6. On December 11, 2019, Department sent Petitioner a denial of service notice. The notice indicated Petitioner's Temporary Placement request was being denied effective December 11, 2019. (Exhibit A, pp 5-6; Testimony.)
7. On or around December 11, 2019, Department indicated to Petitioner that in lieu of continued placement, Petitioner would be approved for 5x a week program participation, homecare, respite care and emotional support. (Testimony.)
8. Department has continued to work with Petitioner on housing and relocation. (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:

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

Medicaid Provider Manual (MPM), October 1, 2019 version
PACE Chapter, pp. 1-2
(Underline added by ALJ)

The Code of Federal Regulations (CFR) addresses PACE programs, in part these regulations state:

§ 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 a PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization.

§ 460.92 Required services.

The PACE benefit package for all participants, regardless of the source of payment, must include the following:

- (a) All Medicare-covered items and services.
- (b) All Medicaid-covered items and services, as specified in the State's approved Medicaid plan.
- (c) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

§ 460.96 Excluded services.

The following services are excluded from coverage under PACE:

- (a) Any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service.
- (b) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and nonmedical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care).

§ 460.98 Service delivery.

- (a) Plan. A PACE organization must establish and implement a written plan to furnish care that meets the needs of each participant in all care settings 24 hours a day, every day of the year.
- (b) Provision of services.
 - (1) The PACE organization must furnish comprehensive medical, health, and social services that integrate acute and long-term care.

(2) These services must be furnished in at least the PACE center, the home, and inpatient facilities.

Petitioner is an ongoing participant with Department. Prior to the denial of service, Petitioner had recently been approved for short-term placement for rehabilitation purposes. Based on the evidence presented, Petitioner was back to an appropriate baseline and no longer required the short-term placement.

Petitioner did not rebut the position of the Department. Specifically, Petitioner did not dispute the finding that she was able to independently perform her activities of daily living. Petitioner did indicate that at this time she requires assistance with the administration of insulin. This however was something relatively recent and not something in place or required back in December of 2019.

Consequently, I find sufficient evidence of the Department properly denying Petitioner's request for continued short-term placement and must affirm the Department's actions in this matter.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly properly denied Petitioner's request for continued placement.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

CA/sb



Corey Arendt

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 Department Rep.

Laura Ferrara, CHC, CHPC
200 W. Michigan Ave. #103
Battle Creek, MI
49077

DHHS -Dept Contact

Roxanne Perry
400 S PINE ST
CAPITAL COMMONS
LANSING, MI
48909

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI

Community Health Rep

Senior Care Partners PACE
200 W Michigan Ave #104
Battle Creek, MI
49017

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED], MI