



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 14, 2020
MOAHR Docket No.: 20-005134
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 9, 2020. Petitioner appeared and testified on his own behalf. Danielle Wiser, Quality Assistance Director, represented Respondent PACE North, a Program of All-Inclusive Care for the Elderly (PACE) organization. Nicole Farkas, Center Director, appeared as a PACE witness.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did Respondent properly deny Petitioner's request for additional PACE 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" or "Department") and oversees PACE in Petitioner's geographical area.
2. Petitioner is blind and suffers from benign prostatic hyperplasia (BPH), chronic obstructive pulmonary disease (COPD), depression, dizziness, essential hypertension, gait disturbance, gastroesophageal reflux disease (GERD), hyperlipidemia, musculoskeletal chest pain, normochromic normocytic anemia, obstructive sleep apnea, recurrent syncope,

rheumatoid arthritis, seizure disorder, thrombocytopenia and traumatic brain injury. (Exhibit A; Testimony).

3. Petitioner is enrolled in PACE and receiving services through PACE. (Exhibit A; Testimony).
4. As part of his services, Petitioner had been authorized for ten (10) hours per week of home care services and more recently eight (8) hours per week. (Testimony).
5. In 2019, Petitioner had 5 episodes requiring medical attention. (Testimony).
6. As of September 9, 2020, Petitioner has had 2 episodes requiring medical attention with the most recent being August 17, 2020. (Testimony).
7. On June 16, 2020, Petitioner underwent an occupational assessment. During the assessment, it was determined Petitioner was modified independent for the tasks of dressing, toileting, grooming, feeding, bathing, transferring, mobility, and laundry. During the assessment, Petitioner was noted to be alert and oriented x4 with fair judgment and minimal impairment with problem solving, and Petitioner reported he had 10% usage of his left hand. (Exhibit A; Testimony).
8. On or around August 6, 2020, Petitioner requested 20 hours per week of home care services. (Exhibit A; Testimony).
9. On August 7, 2020, a Registered Nurse completed an in-home assessment of Petitioner in Petitioner's home. During the assessment, it was observed and noted that Petitioner was independent with all Activities of Daily Living. (Exhibit A; Testimony).
10. On August 10, 2020, after a review of the June 16, 2020 occupational assessment and August 7, 2020 assessment, PACE issued a notice of adverse action. The notice indicated Petitioner's request for 20 weekly hours of home care was being denied and that 8 weekly hours of home care would be approved. (Testimony).
11. Petitioner lives within a few miles of a grocery store and receives meals. (Exhibit A; Testimony).
12. Petitioner is seeking additional assistance for laundry, cleaning, and light cooking. (Testimony).
13. On August 12, 2020, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (See Hearing File).

14. Two separate physicians provided Petitioner with letters requesting 20 hours a week of home care. (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 its services, the Medicaid Provider Manual (MPM) provides:

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 care¹

Moreover, regarding PACE services and applicant appeals, the MPM also states in part:

3.13.C. PACE SERVICES

Noncoverage or nonpayment of services by the PACE organization for a beneficiary enrolled in PACE is an adverse action. If the beneficiary and/or representative disagrees with the noncoverage or nonpayment of services by the PACE organization, they have the right to request an administrative hearing before an administrative law judge. Information regarding the appeal process may be found on the Michigan Administrative Hearing System (MAHS) website. (Refer to the Directory Appendix for website information.) The beneficiary may request continuation of the disputed service with the understanding that he may be liable for the cost of the disputed service if the determination is not made in his favor.²

¹ MPM, Program of All-Inclusive Care for the Elderly (PACE), July 1, 2020, pp 1-2.

² MPM, Program of All-Inclusive Care for the Elderly (PACE), July 1, 2020, pp 7-8.

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only the amount and timing of those services that are in dispute, with Petitioner appealing PACE's decision to deny Petitioner's request for twelve additional home care hours per week.

In appealing PACE's decision, Petitioner bears the burden of proving by a preponderance of the evidence that PACE erred.

Given the record in this case, Petitioner has failed to meet that burden of proof and PACE's decision must therefore be affirmed. Petitioner continues to be authorized for a significant amount of home care services and as fully detailed by PACE's witnesses; the authorized hours appear to be sufficient to meet Petitioner's care needs.

Petitioner argued his conditions have deteriorated but failed to present any evidence of his conditions deteriorating prior to August 10, 2020, the date of the negative action. If anything, the applicable testimony reflects Petitioner's conditions to have possibly improved seeing how he went from 5 incidents requiring medical care in 2019 down to 1 incident in 2020 (prior to August 17, 2020). While it may be true that Petitioner required additional medical care in late August of 2020 and will undergo surgery in the coming weeks, this information was not provided to PACE contemporaneous to or prior to the decision to deny additional hours. While PACE is required to provide medically necessary care, they cannot speculate as to the amount of care one should receive in the future and is not able to reasonably assume future incidents requiring medical attention. Additionally, the Petitioner did not identify specifically how the current allotment was inadequate.

Consequently, I find sufficient evidence to affirm PACE's actions in this case.

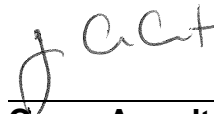
DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

PACE's decision is **AFFIRMED**.

CA/dh



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 -Dept Contact

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

Petitioner

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Community Health Rep

PACE North
c/o Danielle Wisner, QA
2325 N. Garfield
Traverse City, MI 49686