[redacted]
[redacted], MI [redacted]

Date Mailed: June 2, 2020
MOAHR Docket No.: 20-001406
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 May 6, 2020. Petitioner appeared and testified on his own behalf. Sandy Lewis, Quality Manager, appeared on behalf of the Respondent PACE of Southwest Michigan, a Program of All-Inclusive Care for the Elderly (PACE) organization. Lisa McLaren, social worker, testified as a witness for Respondent.

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-67. Petitioner did not submit any exhibits.

ISSUE

Did Respondent properly terminate Petitioner's enrollment in PACE?

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 a [redacted]-year-old Medicaid beneficiary who has been diagnosed with, among other conditions, end-stage renal disease (ESRD); hypertension; atrial fibrillation; anemia; osteoporosis; and vascular disease. (Exhibit A, pages 10-1123-24).

3. Since May of 2018, Petitioner has been enrolled in PACE and receiving services through Respondent. (Exhibit A, pages 5-10, 20-24, 34-42, 46-58; Testimony of Respondent's Social Worker).

4. He was found to be eligible for PACE after passing through Door 4 of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) tool used by Respondent. (Exhibit A, page 24; Testimony of Social Worker).

5. Petitioner passed through Door 4 due to the frequency of his dialysis appointments. (Exhibit A, page 24; Testimony of Social Worker).

6. Through PACE, Petitioner attends Respondent's center one day a week. (Exhibit A, page 17; Testimony of Petitioner).

7. He does not receive any in-home services and he is independent in all his Activities of Daily Living. (Exhibit A, pages 41, 43; Testimony of Social Worker).

8. He does not receive any skilled therapies and his cognition is intact. (Exhibit A, pages 24, 34-60; Testimony of Social Worker).

9. On January 28, 2020, Respondent performed another LOCD with respect to Petitioner. (Testimony of Social Worker).

10. In that LOCD, Petitioner was found to be ineligible for PACE based upon his failure to qualify via entry through one of the seven doors of that tool. (Testimony of Social Worker).

11. On January 29, 2020, Respondent sent Petitioner written notice that his enrollment in PACE would be terminated as of February 29, 2020 due to an ineligible LOCD. (Exhibit A, pages 2-3).

12. On February 27, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit A, page 4).

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 eligibility for it, the Medicaid Provider Manual (MPM) provides:

> **SECTION 1 – GENERAL INFORMATION**
>
> 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 . . .

* * *

SECTION 3 – ELIGIBILITY AND ENROLLMENT

3.1 ELIGIBILITY REQUIREMENTS

To be eligible for PACE enrollment, applicants must meet the following requirements:

- Be age 55 years or older.
- Meet applicable Medicaid financial eligibility requirements. (Eligibility determinations will be made by the Michigan Department of Health and Human Services (MDHHS).)
- Reside in the PACE organization's service area.
- Be capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization.
- Receive a comprehensive assessment of participant needs by an interdisciplinary team.

- A determination of functional/medical eligibility based upon the online version of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD) that was conducted online within fourteen (14) calendar days from the date of enrollment into the PACE organization.

- Be provided timely and accurate information to support Informed Choice for all appropriate Medicaid options for Long Term Care.

- Not concurrently enrolled in the MI Choice program.

- Not concurrently enrolled in an HMO.

3.2 COMPLETION OF THE MEDICAID NURSING FACILITY LOC DETERMINATION

A PACE applicant's eligibility for coverage of nursing facility services and enrollment in the PACE organization is determined by the online application of the Michigan Medicaid Nursing Facility Level of Care Determination (LOCD). The PACE organization will not be reimbursed for nursing facility services rendered when the applicant is determined not to meet the LOCD criteria. Providers must submit the LOCD information into its online version no later than fourteen (14) calendar days following the start of services. Instructions and required forms related to the completion of the Medicaid Nursing Facility Level of Care Determination are available on the MDHHS website. (Refer to the Directory Appendix for website information.)

The LOCD must be completed by a health professional (physician, registered nurse, licensed practical nurse, clinical social worker (BSW or MSW), or physician assistant) representing the proposed provider. Nonclinical staff may perform the evaluation when clinical oversight by a professional is performed. The PACE organization will be held responsible for enrolling only those participants who meet the criteria outlined in this section.

The Michigan Medicaid Nursing Facility Level of Care Determination must be completed using the online version in the following situations:

- all new enrollments of Medicaid-eligible beneficiaries.

- re-enrollment of Medicaid-eligible beneficiaries.

- significant change in condition of a current PACE Medicaid-eligible beneficiary.

The online LOCD must be completed only once for each admission or readmission to the program.

* * *

3.8 ANNUAL RECERTIFICATION

MDHHS must annually certify that PACE participants continue to meet PACE financial eligibility requirements. PACE organizations must also ensure that participants continue to meet the LOCD criteria on an ongoing basis. If the participant continues to meet the LOCD criteria, it must be demonstrated in the medical record by way of initial comprehensive assessments, reassessments and progress notes. Additional online LOCDs are not conducted for the purpose of determining ongoing LOCD eligibility.

If the PACE participant no longer meets the LOCD criteria, federal regulations may deem the participant to be eligible for the PACE program until the next annual reevaluation if, in the absence of continued coverage under PACE, the participant reasonably would be expected to again meet the nursing facility level of care criteria within the next six months.

* * *

3.10 ADVERSE ACTION NOTICE

When the provider determines that the beneficiary does not qualify for services based on the Michigan Medicaid Nursing Facility Level of Care Determination, the organization must immediately issue an adverse action notice to the beneficiary or his authorized representative. The action notice must include all of the language of the sample letters for long term care. Copies of the letters are available on the MDHHS website. (Refer to the Directory Appendix for website information.)

> As with any benefit denial, the beneficiary may request an administrative hearing. The Michigan Office of Administrative Hearings and Rules (MOAHR) Policies and Procedures Manual explains the process by which each different case is brought to completion. The manual is available for review on the MDHHS website. (Refer to the Directory Appendix for MOAHR contact and website information.)
>
> *MPM, January 1, 2020 version*
> *PACE Chapter, pages 1-3, 5-6*

A LOCD is therefore mandated for all Medicaid-reimbursed admissions to PACE and, even after enrollment, a beneficiary must continue to meet the outlined criteria in the LOCD on an ongoing basis in order to remain in the program.

The LOCD consists of seven-service entry doors or domains. The doors are: Activities of Daily Living, Cognitive Performance, Physician Involvement, Treatments and Conditions, Skilled Rehabilitative Therapies, Behavior, or Service Dependency. *See* MPM, January 1, 2020 version, Nursing Facility Level of Care Determination Chapter, pages 9-10.

The January 28, 2020 LOCD was the basis for the action at issue in this case. To be found eligible for Medicaid nursing facility coverage the Petitioner must have met the requirements of at least one door:

Door 1
Activities of Daily Living (ADLs)

> **Scoring Door 1:** The applicant must score at least six points to qualify under Door 1.
>
> **(A) Bed Mobility, (B) Transfers, and (C) Toilet Use:**
> • Independent or Supervision = 1
> • Limited Assistance = 3
> • Extensive Assistance or Total Dependence = 4
> • Activity Did Not Occur = 8
>
> **(D) Eating:**
> • Independent or Supervision = 1
> • Limited Assistance = 2
> • Extensive Assistance or Total Dependence = 3
> • Activity Did Not Occur = 8

Door 2
Cognitive Performance

Scoring Door 2: The applicant must score under one of the following three options to qualify under Door 2.

1. "Severely Impaired" in Decision Making.

2. "Yes" for Memory Problem, and Decision Making is "Moderately Impaired" or "Severely Impaired."

3. "Yes" for Memory Problem, and Making Self Understood is "Sometimes Understood" or "Rarely/Never Understood."

Door 3
Physician Involvement

Scoring Door 3: The applicant must meet either of the following to qualify under Door 3

1. At least one Physician Visit exam AND at least four Physician Order changes in the last 14 days, OR

2. At least two Physician Visit exams AND at least two Physician Order changes in the last 14 days.

Door 4
Treatments and Conditions

Scoring Door 4: The applicant must score "yes" in at least one of the nine categories above [Stage 3-4 pressure sores; Intravenous or parenteral feedings; Intravenous medications; End-stage care; Daily tracheostomy care, daily respiratory care, daily suctioning; Pneumonia within the last 14 days; Daily oxygen therapy; Daily insulin with two order changes in last 14 days; Peritoneal or hemodialysis] and have a continuing need to qualify under Door 4.

Door 5
Skilled Rehabilitation Therapies

Scoring Door 5: The applicant must have required at least 45 minutes of active ST, OT or PT (scheduled or delivered)

in the last 7 days and continues to require skilled rehabilitation therapies to qualify under Door 5.

Door 6
Behavior

Scoring Door 6: The applicant must score under one of the following 2 options to qualify under Door 6.

1. A "Yes" for either delusions or hallucinations within the last 7 days.

2. The applicant must have exhibited any one of the following *behaviors* for at least 4 of the last 7 days (including daily): Wandering, Verbally Abusive, Physically Abusive, Socially Inappropriate/Disruptive, or Resisted Care.

Door 7
Service Dependency

Scoring Door 7: The applicant must be a current participant, demonstrate service dependency, and meet all three criteria [participant for at least one consecutive year (no break in coverage); requires ongoing services to maintain current functional status; no other community, residential, or informal services are available to meet the applicant's needs] to qualify under Door 7.

Moreover, "[g]uidance on administering the LOCD, including definitions and methods, is provided in the Michigan Medicaid Nursing Facility Level of Care Determination Field Definition Guidelines." *See* MPM, January 1, 2020 version, Nursing Facility Level of Care Determination Chapter, page 9.

Here, the Department and the facility determined that Petitioner did not pass through any of the above seven doors in the January 28, 2020 LOCD and that he was therefore ineligible for PACE.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the 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 failed to meet his burden of proof and Respondent's decision must therefore be affirmed.

The facts in this case are undisputed and they reflect that Petitioner did not pass through any of the seven doors of the LOCD. For example, there is no evidence that Petitioner needs sufficient assistance with the specific tasks identified in Door 1. Moreover, nothing suggests that, during the relevant look-back periods, that Petitioner's medical conditions, or the effects of those conditions, met the criteria for passing through Doors 2, or 6. There is also no evidence that any treatment Petitioner received met the criteria required by Doors 3, 5 or 6, or that Petitioner requires ongoing services through PACE to maintain his current functional status, with no other community, residential, or informal services available to meet his needs, as required under Door 7 given his abilities and limited services.

The only door in dispute is Door 4 given that Petitioner continues to receive dialysis and the receipt of dialysis is a listed treatment to pass through Door 4. However, the receipt of dialysis alone is insufficient to pass through Door 4 and the Field Definition Guidelines identify additional requirements:

> Certain treatments and conditions may be a predictor of potential frailty or increased health risk. **These conditions require the applicant's primary physician's documented diagnosis in the medical record. Applicants will not qualify under Door 4 when the conditions have been resolved, or they no longer affect functioning or the need for care.** It is required that an active restorative nursing and discharge plan be developed and used as the focus for treatment. Unless otherwise noted, score each item for the last 14-day timeframe. The 14-day look-back period is based on the eligibility determination date.
>
> * * *
>
> Applicants who score at Door 4 require ongoing assessment and follow-up monitoring. Care planning for these applicants must include restorative nursing interventions and a specific discharge plan, except for those receiving end-of-life care. Restorative nursing interventions are discussed in the Michigan Medicaid Nursing Facility Level of Care Determination Process Guidelines.
>
> *LOCD Field Definition Guidelines, pages 11-12*

In this case, while Petitioner continues to receive dialysis, there is no evidence that Petitioner's functioning or the need for care given his independence, including his independence in all ADLs and transporting himself to dialysis, and limited services. Accordingly, given the Department's policies and the guidance found in its Field Definition Guidelines, Petitioner no longer passes through Door 4.

Petitioner has therefore failed to demonstrate by a preponderance of the evidence that Respondent erred or that he passes through any of the seven doors of the LOCD as required by policy to stay enrolled in PACE, and Respondent's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly terminated Petitioner's enrollment in PACE.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

Steven Kibit

SK/sb

Steven Kibit
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
CAPITAL COMMONS
LANSING, MI
48909

Petitioner

[redacted], MI

Community Health Rep

PACE of Southwest Michigan
Attn: Rhonda Gibson, Center Manager
2900 Lakeview Avenue
St. Joseph, MI
49085