

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: August 17, 2020
MOAHR Docket No.: 20-003519
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 July 30, 2020. Petitioner appeared and testified on her own behalf. Mandy Bozell, Compliance and Privacy Specialist, appeared and testified on behalf of Respondent Senior Care Partners PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Nichole Clayton, Center Manager; Malory Smith, Occupational Therapist (OT); Tanya Altizer, Personal Care Assistant (PCA); and Nicole Loszewski, PCA Environment Coordinator; also testified as witnesses for Respondent.

During the hearing, Petitioner's Request for Hearing was admitted into the record as Exhibit #1. Respondent also submitted an evidence packet containing eleven proposed exhibits that were admitted into the record as Exhibits A-K.

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. Since September of 2013, Petitioner has been enrolled in PACE and receiving services through Respondent. (Exhibit B).

3. As part of her services through Respondent, Petitioner has been authorized for personal care services. (Exhibit C).
4. As of December 1, 2019, Petitioner was approved for 7.5 hours per week of personal care services. (Exhibit F; Testimony of Petitioner; Testimony of Center Manager).
5. On December 19, 2019, Petitioner underwent surgery. (Exhibit G).
6. After Petitioner underwent surgery, Respondent increased Petitioner's personal care services to 8 hours per week for two weeks as she recovered. (Exhibit F; Testimony of Center Manager).
7. That temporary increase was subsequently extended for another four weeks in January of 2020 at the request of Petitioner and her doctor. (Exhibit G; Exhibit H; Testimony of Center Manager).
8. In February of 2020, after the temporary increase expired and Petitioner's personal care services went back to 7.5 hours per week, Petitioner immediately requested an increase to 8 hours per week. (Exhibit I; Testimony of OT).
9. The extra thirty minutes would give Petitioner 2.5 hours of services on Wednesdays. (Testimony of Petitioner).
10. Petitioner was not receiving any services on Saturdays and did not request any. (Testimony of Petitioner).
11. On February 26, 2020, Respondent sent Petitioner written notice that the request for additional services was denied. (Exhibit A).
12. With respect to the reason for the denial, the notice stated:

[Petitioner] has enough home care hours (7.5) to meet her housekeeping, folding laundry, upper body dressing, and shopping needs. Home care is not able to assist with deep cleaning or organizing tasks.

Exhibit A

13. On June 4, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding the denial of an additional thirty minutes per week of care. (Exhibit #1).

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 care

*MPM, January 1, 2020 version
PACE Chapter, pages 1-2*

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 Respondent's decision to deny Petitioner's request for an additional 30 minutes per week of personal care services.

In support of that decision, Respondent's witnesses testified regarding the course of Petitioner's case with Respondent, including a temporary increase of services while Petitioner recovered from surgery. The OT also specifically testified that, after Petitioner requested an additional 30 minutes of services on Wednesdays, she reviewed Petitioner's home care schedule; assessed Petitioner's capabilities; and reached out to Petitioner's staff, who reported that they generally complete work early and are asked to complete other non-covered services, such as deep cleaning.

In response, Petitioner testified regarding what caregivers do for her and how getting everything done can be difficult on days where Petitioner only has 30 minutes of services, *i.e.* Tuesdays and Fridays. She also testified that she gets no services on Saturdays and would wish to have some in order to have help with dressing, but that she did not request such services. She further testified that she had 9 hours per week of personal care services in the past and that, since those services were reduced, she

has had to lower her standards as to what can be done with tasks such as housecleaning.

Petitioner testified that she does what she can for herself and that things must be organized because she had to downsize and move into a small apartment. She also testified that, as part of her move, she has asked her workers to remove stuff from boxes in order to put onto shelves or set aside to donate. She further testified that the aides do a good job, but they are stretched thin.

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent 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 record in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must therefore be affirmed. Petitioner was previously receiving the 8 hours per week of personal care services she has requested, but that was only approved on a temporary basis while Petitioner recovered from surgery; Petitioner is now recovered from surgery; and her current authorization of 7.5 hours per week appears to be sufficient to meet her needs given the assessments completed by Respondent. Moreover, while Petitioner testified both that it is difficult for aides to complete their work on days where she only has 30 minutes of services and that she has a need for some services on Saturdays, the extra 30 minutes she requested were to give her 2.5 hours of services on Wednesdays and Petitioner did request more services on days she only had 30 minutes of care or on Saturdays. To the extent Petitioner wants to request additional services on other days, she is free to do so in the future. With respect to the request in issue in this case, 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's properly denied Petitioner's request for additional services.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/sb

Steven Kibit

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
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Petitioner

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Community Health Rep

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