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Date Mailed: October 6, 2020
MOAHR Docket No.: 20-005397
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 the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 1, 2020. Petitioner appeared and testified on her own behalf. Robin Abbey-Hardesty, Center Manager, appeared and testified on behalf of Thome PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization.

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-59. Petitioner did not submit any proposed exhibits.

ISSUE

Did Respondent properly deny Petitioner's request for 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. In August of 2020, Petitioner applied for services through Respondent, an organization that contracts with the Michigan Department of Health and Human Services ("MDHHS" or "Department") and oversees PACE in Petitioner's geographical area. (Testimony of Petitioner; Testimony of Respondent's representative).

2. Respondent then assessed Petitioner's eligibility for PACE. (Exhibit A, pages 21-41, 52-59; Testimony of Respondent's representative).

3. As part of that assessment, Respondent conducted a Michigan Medicaid

Nursing Facility Level of Care Determination ("LOCD") with respect to Petitioner. (Exhibit A, pages 52-59).

4. In that LOCD, Petitioner was found to be ineligible for a Medicaid nursing facility level of care based upon her failure to qualify via entry through one of the seven doors of that tool. (Exhibit A, pages 52-59).[1]

5. On August 19, 2020, Respondent sent Petitioner written notice that her request for services had been denied on the basis that she did not meet the level of care requirements for PACE. (Exhibit A, pages 2-4).

6. On August 27, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter with respect to Respondent's decision.

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;

[1] Respondent also telephoned MPRO, an MDHHS designee, and requested a Nursing Facility Level of Care Exception Review for Petitioner; and MPRO subsequently determined that Petitioner did not meet the criteria for an exception either. (Testimony of Respondent's representative).

- 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

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.
>
> *MPM, July 1, 2020 version*
> *PACE Chapter, pages 1-3*

A LOCD is therefore mandated for all Medicaid-reimbursed admissions to PACE.

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, July 1, 2020 version, Nursing Facility Level of Care Chapter, page 9.

The August 12, 2020 LOCD was the basis for the action at issue in this case. To be found eligible for PACE, 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.

Here, Respondent denied Petitioner's request for enrollment in PACE pursuant to the above policies and on the basis that Petitioner did not meet the functional/medical eligibility criteria for PACE based upon the LOCD that had been completed.

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

Given the above findings of fact and applicable policies, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof and that the Respondent's decision must therefore be affirmed.

During the hearing, Petitioner reported that she was hospitalized for most of June and July of 2020 and that she has a need for assistance with transportation, laundry, and housekeeping. However, neither that testimony nor Respondent's assessments demonstrate that Petitioner passed through any of the seven doors of the LOCD as required to be enrolled in PACE.

For example, while Petitioner may need assistance with transportation and some tasks around the house, there is no evidence that Petitioner needs assistance with any of 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, 4, or 6; or that any medical treatment Petitioner received during the applicable look-back periods met the criteria required by Doors 3, 4, 5 or 6.[2] Finally, Petitioner has not been a resident of a nursing facility or a participant in MI Choice, PACE or MI Health Link for over a year, and she therefore did not pass through Door 7.

To the extent Petitioner's circumstances have changed, she can always request PACE services again in the future. With respect to the issue in this case however, Respondent's decision is affirmed given the information available at the time.

[2] Petitioner initially testified that she had physical therapy during the seven days preceding the LOCD, but later corrected herself and testified that, as found by Respondent during its assessment, she had been discharged from such services prior to the look-back period for Door 5.

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 services.

IT IS, THEREFORE, ORDERED that:

- Respondent's decision is **AFFIRMED**.

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]
[redacted]
[redacted], MI
[redacted]

Community Health Rep

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