



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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██████████, MI ██████████

Date Mailed: February 2, 2021
MOAHR Docket No.: 20-006641
Agency No.: ██████████
Petitioner: ██████████

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 January 13, 2021. ██████████, Petitioner's sister and designated power of attorney (DPOA), appeared and testified on Petitioner's behalf. ██████████, Petitioner's son, also testified as a witness for Petitioner. Mandy Bozell, Compliance and Privacy Specialist, appeared on behalf of Respondent Senior Care Partners P.A.C.E., a Program of All-Inclusive Care for the Elderly (PACE) organization. Courtney Rowe, registered nurse (RN)/care coordinator; Kerri De Jonge, physical therapist (PT); and Lisa Woodruff, Nurse Practitioner (NP); testified as witnesses for Respondent.

During the hearing, the following exhibits were entered into the record:

- Exhibit #1: Request for Hearing
- Exhibit A: Advance Action Notice
- Exhibit B: Face Sheet
- Exhibit C: Current LifePlan
- Exhibit D: Respondent's Summary of Case
- Exhibit E: 8/26/20 Progress Note – Nursing
- Exhibit F: 8/27/20 Progress Note – Nursing
- Exhibit G: 8/28/20 Progress Note – Nursing – SDR
- Exhibit H: 8/28/20 Progress Note – Nursing
- Exhibit I: 8/28/20 Progress Note – Nursing – SDR Denial
- Exhibit J: 9/2/20 Statement from Petitioner's DPOA

ISSUE

Did Respondent properly deny Petitioner's request for placement in a skilled nursing facility (SNF)?

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 woman who has been diagnosed with, among other conditions, hypertension; dementia; anxiety; urinary incontinence; dysuria; insomnia; gastroesophageal reflux disease; major depressive disorder; and constipation. (Exhibit B, pages 1-2).
3. Petitioner also received a right hip replacement in August of 2019. (Exhibit #1, page 3; Exhibit B, pages 1-2).
4. Due to her diagnoses and need for assistance, Petitioner has been enrolled in PACE and receiving services through Respondent. (Exhibit B, pages 1-7).
5. On July 27, 2020, Petitioner was hospitalized because of an infection in her right hip joint. (Exhibit #1, page 3; Exhibit B, page 2; Exhibit C, page 1).
6. Prior to her hospitalization, Petitioner lived in an Adult Foster Care (AFC) home. (Exhibit F, page 1).
7. While hospitalized, Petitioner underwent surgery and had a temporary hip spacer put in. (Exhibit #1, page 3; Exhibit B, page 2; Exhibit C, page 1).
8. On August 26, 2020, while Petitioner was still hospitalized, Petitioner's representative requested that Petitioner be discharged to a SNF instead of an AFC home due to Petitioner's condition and pain. (Exhibit E, page 1).
9. While reviewing the request, Respondent contacted Petitioner's AFC home, who reported that it could not accept Petitioner back if Petitioner required a two-person assist. (Exhibit F, page 2).
10. However, Respondent also found a different AFC home who reported that it could meet Petitioner's needs. (Exhibit G, pages 1-2).

11. On August 28, 2020, Petitioner was admitted to a SNF. (Exhibit B, page 1).
12. While it had not finished its review, Respondent approved a temporary admission because Petitioner's discharge date from the hospital occurred prior to the completion of Respondent's review process. (Testimony of RN/Care Coordinator).
13. However, at the end of the review process, Respondent determined that the request for placement in a SNF should be denied. (Testimony of RN/Care Coordinator).
14. On August 28, 2020, Respondent sent Petitioner's representative written notice that the request for placement at a SNF had been denied. (Exhibit A, pages 1-10).
15. With respect to the reason for the denial, the notice stated:

Team is denying this request at this time due to being able to meet the participant's needs at a lower level of care at the AFC. Team believes that she will have a better outcome at the AFC with having socialization needs met and having continuity of care provided by [Respondent].

Exhibit A, page 2

16. Petitioner's representative then filed an appeal with Respondent with respect to that decision. (Exhibit #1, page 4).
17. On September 25, 2020, Respondent sent Petitioner's representative written notice that the appeal had been denied. (Exhibit #1, pages 4-5).
18. With respect to the reason for the decision, the notice stated:

Appeal Committee has determined to uphold IDTs decision to deny placement at a SNF instead of an AFC. The Appeal Committee noted that IDT took the appropriate steps to identify the AFC could fully accommodate the participants [sic] care need.

Exhibit #1, page 4

19. On October 26, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed in this matter with respect to the denial of the request for placement in a SNF. (Exhibit #1, pages 1-15).

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:

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. 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, July 1, 2020 version
PACE Chapter, pages 1-2
(italics added for emphasis)*

Here, Petitioner has been approved for PACE services at all times relevant to this matter and it is only the denial of a particular service in dispute, with Petitioner requesting placement in a SNF and Respondent denying the request on the basis that Petitioner's needs can be met at a lower level of care, *i.e.* an AFC home.

In support of that decision, the RN/Care Coordinator testified that Respondent's Care Team addressed Petitioner's request and that, while it was determined that Petitioner's previous AFC home would not be able to meet Petitioner's needs following her discharge from the hospital, there was another AFC home that could do so and that it was not necessary for Petitioner to be placed in a SNF. She also described Petitioner's specific needs and how they would be met through the AFC home and Respondent working in concert, including monitoring; medications; two-person assists; and skilled therapies. The RN/Care Coordinator further testified that the SNF will only allow one skilled therapist onsite, which would be a problem in Petitioner's case, and that the SNF has very restrictive isolation policy that would require Petitioner continually quarantining following outside appointments. She also noted that an AFC is a less restrictive environment than a SNF.

In response, Petitioner's representative testified that they requested the SNF placement because that is what Petitioner's doctor recommended. She also provided a letter from the doctor, dated September 30, 2020, stating in part:

[Petitioner] needs to stay in the nursing facility she is currently in and should not be transferred to an assistive living facility at this time due to not being mentally stable and the patient is not able to weight bear due to a right hip closed reduction. She needs 24 hour nursing care at this time.

Exhibit #1, page 2

Petitioner's representative further testified that Petitioner was sent back to her AFC home following a previous hospitalization and that it was not equipped to care for her given the unskilled and untrained staff. She also testified that they did not want to send Petitioner back there again and risk further problems.

Petitioner's son testified that Petitioner needs a lot of care and has recently tested positive for the COVID-19 virus. He also testified that Petitioner is currently getting everything she needs at the SNF, but that she has not completely improved, and that moving her would be too hard for her. In particular, he testified that Petitioner's mental condition is way off and that she is very confused.

Respondent's Nurse Practitioner then testified that any behavioral health concerns, including necessary adjustments to Petitioner's medications, can be addressed anywhere, including in an AFC. She also testified that Petitioner's medications were recently adjusted due to Petitioner being in a delirious state following her COVID-19 infection and that Petitioner's current placement, in a chaotic, dementia unit in the SNF, is not a good place for Petitioner given her psychiatric concerns.

Petitioner's representative then testified that Petitioner's mental health has deteriorated over time and that she is in worse condition than when she lived in an AFC home before. She also testified that an AFC home is not designed to care for someone in Petitioner's mental and physical condition. She further testified that Petitioner will not ask for help even when in pain, and that she is content where she currently is.

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 Respondent's decision in light of the information it had at the time it made the decision.

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof and Respondent's decision must therefore be affirmed. For instance, Respondent's witnesses credibly and fully explained how an AFC home is the proper placement for Petitioner as the least restrictive environment that can meet Petitioner's needs. Moreover, while Petitioner's

witnesses credibly demonstrated why Petitioner's former AFC home cannot meet Petitioner's needs, that undisputed testimony is irrelevant in the end as Respondent has found a different AFC home for Petitioner and the mere fact that one AFC cannot meet Petitioner's needs does not mean that all AFC homes cannot meet her needs. Similarly, while Petitioner's doctor did generally recommend placement in a SNF for Petitioner, that letter and recommendation are ultimately unpersuasive given Respondent's specific findings and evidence regarding Petitioner's needs, and how they can be met in an AFC home, and that lack of specific needs identified by the doctor that could only be met in a SNF.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly denied Petitioner's request for placement in a skilled nursing facility.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/sb



Steven Kibit

Administrative Law Judge
for Elizabeth Hertel, 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.

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