

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: January 22, 2021  
MOAHR Docket No.: 20-006855  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

## **ADMINISTRATIVE LAW JUDGE: Corey Arendt**

### **DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* upon Petitioner's request for a hearing.

After due notice, a hearing was held on December 15, 2020 and continued January 14, 2021. [REDACTED] Petitioner's Daughter, appeared on behalf of Petitioner. Amanda Perlin appeared as a witness for Petitioner. Tracey Diroff, Director of Quality & Compliance for PACE Southeast Michigan, appeared on behalf of Respondent, PACE Southeast Michigan (Department).

#### Exhibits:

Petitioner                    None

Department                    A – Hearing Summary

#### **ISSUE**

Did Department properly terminate Petitioner's 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. Department is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS) and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony.)
2. Petitioner is an [REDACTED]-year-old former Medicaid beneficiary, born [REDACTED], 1940. (Exhibit A; Testimony.)

3. On July 29, 2020, Petitioner's daughter and son participated in a PACE telephone intake screening process. (Exhibit A.)
4. At the time of the screening, Petitioner had Medicaid with a spenddown and Medicare. (Exhibit A; Testimony.)
5. After the screening process, Petitioner was enrolled into the PACE program. (Exhibit A; Testimony.)
6. On September 11, 2020, MDHHS notified the Department that Petitioner did not meet the Medicaid requirements for the PACE program due to Petitioner being over the income limits for the program. (Exhibit A; Testimony.)
7. On October 27, 2020, the Department notified Petitioner that he was no longer eligible for PACE services due to the Medicaid requirement. (Exhibit A; Testimony.)
8. As of January 14, 2021, the Department is still providing PACE services to Petitioner and will continue providing PACE services to Petitioner until the COVID-19 emergency is lifted. (Exhibit A; Testimony.)
9. On November 10, 2020, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing.

## **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

## **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.<sup>1</sup>

In this case, Department intends to close Petitioner's case at the conclusion of the COVID-19 emergency pandemic as a result of MDHHS determining Petitioner did not meet the applicable Medicaid financial eligibility requirements.

Petitioner's daughters argue the Petitioner is benefiting from the program, Petitioner should not be penalized; and that someone made a mistake during the process and they would like to know who.

My role is solely to determine whether the Department's actions were in conformity with the applicable laws and policies. I cannot change the laws/policies, nor can I make any special exceptions for any one person. PACE eligibility requires beneficiaries to meet the applicable Medicaid financial eligibility requirements as determined by MDHHS. In

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<sup>1</sup> Medicaid Provider Manual, Program of All-Inclusive Care for the Elderly, October 1, 2020, pp 1-3.

this case, the undisputed evidence indicates MDHHS had determined Petitioner did not meet these requirements. As a result, I have no choice but to affirm the Department's actions.

**DECISION AND ORDER**

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

**IT IS, THEREFORE, ORDERED** that:

Department's decision is AFFIRMED.

CA/dh

*J. Arendt*  
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  
Capitol Commons  
400 S Pine St  
Lansing, MI 48909

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

**Community Health Rep**

PACE Southeast Michigan  
21700 Northwestern Highway  
Southfield, MI 48075