

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: April 2, 2021
MOAHR Docket No.: 21-001097
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on April 1, 2021. [REDACTED], Petitioner's Spouse, appeared on behalf of Petitioner. [REDACTED], Service Coordinator, appeared as a witness for Petitioner. Tracey Diroff, Director of Quality and Compliance, appeared on behalf of Respondent, PACE of Southeast Michigan (Department).

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Program of All-Inclusive Care for the Elderly (PACE) organization properly deny Petitioner's request for a hospital bed?

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.
2. On January 8, 2021, Petitioner requested a hospital bed. (Exhibit A; Testimony.)

3. On January 8, 2021, Petitioner participated in a rehab assessment to determine the medical necessity of a hospital bed. (Exhibit A; Testimony.)
4. During the assessment, Petitioner successfully demonstrated his ability to transfer to and from his current bed without the need for assistance. At the time of the assessment, Petitioner's bed had two bed assist rails and a wide bed assist rail. Petitioner indicated he wanted a hospital bed because his arms were sore, his back hurts and he could use something to elevate his heel. The Physical Therapist performing the assessment, advised Petitioner to use the provided wedge to elevate his heel. Following the assessment, the therapist provided the following assessment/plan:

Participant has 5/5 strength in both arms and has 4+/5 knee extension strength in left lower extremity. He has demonstrated good trunk control at the edge of the bed with good dynamic sitting balance. He is capable of transferring himself on and off the bed. A hospital bed would [sic] is not warranted at this time. His concern of sore arms and back can be addressed by ongoing home exercise program, attending therapy at DHC and appropriate pain medications prescribed by primary care. (Exhibit A, p 3.)

5. On January 12, 2021, Petitioner was informed of the decision to deny Petitioner's request for a hospital bed. Around this time, Petitioner's wife was informed that if Petitioner has increased difficulty with bed mobility, positioning, or bed transfers in the future he can be re-assessed for meeting criteria to qualify for a hospital bed. (Exhibit A.)
6. On January 19, 2021, Petitioner appealed the decision to deny his request for a hospital bed. (Exhibit A.)
7. On February 5, 2021, the Department issued an Appeals Committee Documentation Form affirming the decision to deny Petitioner's request for a hospital bed. (Exhibit A.)
8. On March 4, 2021, 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:

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 care¹

¹ Medicaid Provider Manual (MPM), Program of All-Inclusive Care for the Elderly, October 1, 2019, pp 1, 2.

8.3 NONCOVERED SERVICES

The items or services listed below are not covered by the Medicaid program:

...

All services or supplies that are not medically necessary²

Petitioner requested a hospital bed and was assessed by a therapist to determine the medical necessity. During the assessment, bed rails were observed and installed, and Petitioner demonstrated his ability to transfer to/from the bed without assistance. It was thereafter determined a hospital bed was not medically necessary.

Petitioner argued a hospital bed was necessary due to a fear of falls. The fear of falls itself does not show a hospital bed as being medically necessary. Additionally, the fear of falls itself is speculative and subjective in the absence of supporting documentation. The record provided indicates the last documented fall occurred in 2019.

In this case, Petitioner has the burden of proof and considering the evidence presented, Petitioner has not met his burden. Consequently, I find sufficient evidence to affirm the Department's determination to deny Petitioner's request for a hospital bed. The Petitioner is always able to make a new request for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Petitioner's request for a hospital bed based on the available information.

IT IS THEREFORE ORDERED that

The Department's decision is **AFFIRMED**.

CA/dh

J. Arendt
Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

² Medicaid Provider Manual, General Information for Providers, October 1, 2020, p 23.

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
Capitol Commons
Lansing, MI 48909

Petitioner

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

Authorized Hearing Rep.

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

Community Health Rep

PACE Southeast Michigan –
Sterling Heights
Attn: Karen N. Kaurich
35501 Mound Rd
Sterling Heights, MI 48310