

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: June 14, 2021  
MOAHR Docket No.: 21-002012  
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 May 25, 2021. Petitioner appeared and testified on her own behalf. [REDACTED], Petitioner's caregiver, also testified as a witness for Petitioner. Michelle Reardon, Quality Insurance Director, appeared and testified on behalf of Respondent PACE North, a Program of All-Inclusive Care for the Elderly (PACE) organization. Nicole Farkas, Center Director, also testified as a witness for Respondent.

During the hearing, Petitioner's Request for Hearing was entered into the record as Exhibit #1, pages 1-5. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-36.

**ISSUE**

Did Respondent properly deny Petitioner's request for a power scooter?

**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 Medicaid who lives alone in a single level apartment. (Exhibit A, pages 13, 17).

3. To ambulate, she currently uses a four-wheeled walker or wheelchair. (Exhibit A, pages 13, 17).
4. Since October of 2020, Petitioner has been enrolled in and receiving services through Respondent. (Exhibit A, page 21).
5. On March 22, 2021, Petitioner requested a power scooter through Respondent. (Testimony of Quality Insurance Director).
6. On March 23, 2021, an Occupational Therapist met with Petitioner at Respondent's Day Center and observed Petitioner demonstrating independent wheelchair propulsion. (Exhibit A, page 11; Testimony of Petitioner).
7. The OT also noted that Petitioner has been on Respondent's physical therapy caseload from November of 2020 to February of 2021, and that Petitioner ambulated distances of greater than 100 ft. without physical assistance during that time. (Exhibit A, page 11).
8. The OT further noted that Petitioner was taking part in a restorative program to increase ambulation in the Day Center. (Exhibit A, page 11).
9. That same day, Respondent sent Petitioner written notice that her request for a power scooter was denied. (Exhibit A, pages 3-9).
10. In part, the notice of denial stated:

The reason for this action is because using an electric scooter will further decrease your ability to move independently with your wheelchair or walker. You are currently able to move your wheelchair and walker independently up to distances of 100 ft. because of this a power scooter is not necessary.

*Exhibit A, page 3*

11. On March 24, 2021, Petitioner filed an Internal Appeal with Respondent regarding the denial of her request for a power scooter. (Exhibit A, page 25).
12. In that request, Petitioner wrote that a "power scooter would aid me in getting out more, including visiting people." (Exhibit A, page 27).
13. Respondent's Internal Appeals Committee then reviewed Petitioner's case, and it determined that the denial should be upheld. (Exhibit A, pages 33-35).

14. On April 26, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter. (Exhibit #1, pages 1-5).

## **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, January 1, 2021 version  
PACE Chapter, pages 1-2  
(italics added for emphasis)*

Here, Respondent denied Petitioner's request for a power scooter on the basis that the scooter was not medically necessary or appropriate.

In appealing that decision, 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 that burden of proof and that Respondent's decision must therefore be affirmed.

Respondent credibly found, based on Petitioner's physical therapy records and the observations of staff at the Day Center, that Petitioner can ambulate distances of greater than 100 ft. without physical assistance, and, as such, a power scooter is not

medically necessary. Moreover, while Petitioner and her caregiver credibly testified that it would be easier for Petitioner to get out of the house or go on outings with a motorized device, neither denied Respondent's findings regarding Petitioner's current abilities to ambulate using her walker or wheelchair and Petitioner's preference for a power scooter does not equate to medical necessity, especially given that professionals have found that using such a device would only further decrease your ability to move independently.

To the extent Petitioner's circumstances have changed or she has additional information to provide, she can always request a power scooter 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.

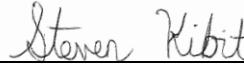
#### **DECISION AND ORDER**

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

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

Respondent's decision is **AFFIRMED**.

SK/sb

  
**Steven Kibit**  
Administrative Law Judge

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**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**

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**Petitioner**

[REDACTED]  
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[REDACTED], MI  
[REDACTED]

**Community Health Rep**

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