

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: October 1, 2021
MOAHR Docket No.: 21-003987
Agency No.: 0
Petitioner: J [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 28, 2021. [REDACTED], Petitioner's daughter, appeared and testified on Petitioner's behalf. Shannon Duffey, Compliance Specialist, represented Respondent Senior Community Care of Michigan, a Program of All-Inclusive Care for the Elderly (PACE) organization. Christine Jodoin, RN, Director and Jessica Hardin, RN, Home Care Coordinator, appeared as witnesses for Respondent.

Following the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-73.¹

ISSUE

Did Respondent properly deny Petitioner's request for placement in an assisted living facility (ALF)?

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, born [REDACTED], who has been diagnosed with alcohol abuse, generalized anxiety disorder, dementia with

¹ The parties both had access to the Hearing Packet during the hearing, but there was some delay and difficulty in getting a copy to the undersigned during the hearing.

behavioral disturbance, major depressive disorder, and polysubstance use disorder. (Exhibit A, p 20; Testimony)

3. Petitioner has been enrolled in PACE and receiving services for approximately one year. (Exhibit A, p 18; Testimony)
4. Petitioner lives alone in her own home. The home does not currently have running water and neither Petitioner nor her family can afford to have the plumbing problems fixed at this time. (Exhibit A, p 18; Testimony)
5. Petitioner has two daughters. One daughter lives locally and is able to provide assistance to Petitioner. The other daughter lives in Arizona. The daughter who lives locally will be returning to full-time work soon and will then not be able to provide as much assistance to Petitioner. (Exhibit A, pp 8-19; Testimony)
6. On June 30, 2021, Petitioner's family requested that Petitioner be permanently placed in an ALF. (Exhibit A, p 16; Testimony)
7. Respondent PACE conducted face to face assessments with Petitioner on July 1, 2021 and July 7, 2021, including assessments by Petitioner's Primary Care Physician, a Registered Nurse, a Social Worker, an Occupational Therapist, a Physical Therapist, a Respiratory Therapist, a Registered Dietician, and a Home Care Coordinator. (Exhibit A, pp 16-73; Testimony)
8. On July 9, 2021, Respondent PACE sent Petitioner's daughter written notice that her request for Petitioner's placement in an ALF had been denied based on the above assessments. Specifically, the notice indicated that Petitioner "is able to complete all ADLs and has good activity tolerance and functional ability. The team determined that Julie could remain living independently within the community with PACE services." (Exhibit A, pp 10-11; Testimony)
9. On July 14, 2021, Petitioner's daughters requested an internal appeal. (Exhibit A, p 12; Testimony)
10. On August 12, 2021, the Internal Appeal Committee (IAC) upheld the decision to deny Petitioner's ALF placement. The IAC concluded, in part, ". . . the participant had exhibited through assessment and observation to be capable of remaining in the community . . ." The IAC also supported Respondent's conclusion that it would help Petitioner find a different home or apartment (with running water) and also look into the potential use of video monitoring for Petitioner. (Exhibit A, pp 12-15; Testimony)
11. On August 30, 2021, the Michigan Office Administrative Hearings and

Rules (MOAHR) received Petitioner's Request for Hearing. (Exhibit A, pp 4-8)

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 federal 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.

*Medicaid Provider Manual
PACE Chapter
April 1, 2021, pp 1-3
Emphasis added*

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 an ALF and Respondent denying the request on the basis that other interventions can meet Petitioner's needs while keeping her in the community.

Respondent's Home Care Coordinator (HCC) testified that Petitioner is able to complete her own ADL's and is able to continue to live in the community with PACE services. Respondent's HCC noted that one of Petitioner's daughters lives locally and is involved in caring for Petitioner. Respondent's HCC indicated that while Petitioner's daughters are concerned with Petitioner "wandering", Petitioner is actually not wandering – she is purposefully going to neighbors' homes asking for specific resources, such as telephone use, rides, cigarettes, and alcohol. Respondent's HCC testified that Petitioner then always returns home on her own. Respondent's HCC indicated that Petitioner also has friends who visit her and will take her out to purchase needed items. Respondent's HCC testified that Petitioner was able to identify what to do in case of a fire and has had no falls since enrollment with PACE. Respondent's HCC testified that Petitioner was able to verbalize how she completes tasks in the home without running water by going to her daughter's home to shower and using gallon jugs of water to flush the toilet, for drinking, and for cleaning. Respondent's HCC noted that Petitioner has and no identified kitchen safety concerns since enrolling in PACE, Petitioner receives Meals on Wheels, and meal preparation assistance as desired through PACE. Respondent's HCC testified that Petitioner's appetite was found to be fair, with 25-50% consumption, and noted that Petitioner had a weight gain of 7.2% in the past 180 days.

Respondent's HCC noted that there are hygiene concerns in the home because there is no running water but that PACE has offered to assist Petitioner and her daughters in finding Petitioner a more suitable place to live. Respondent's HCC testified that Petitioner continues to receive home care services two times per day, seven days per week, including medication prompting with a medication ready device, cuing of "accu" check and insulin, meal preparation, and light housekeeping.

Respondent's Director testified that PACE's mission is to keep participants in their homes as long as they can be supported safely and that here, PACE determined that Petitioner can safely remain in the community with services. Respondent's Director acknowledged the environmental concerns in the current home but noted that Petitioner had been managing well even with those concerns. Respondent's Director noted that Petitioner receives home care seven days per week but does refuse staff sometimes as well. Respondent's Director testified that after the PACE team completed its assessments and issued the denial, the case was reviewed by another agency as part of the internal appeal process, and that agency also supported PACE's decision. Respondent's Director testified that Petitioner simply does not have the ADL needs to be in an ALF.

Petitioner's daughter testified that her mother has fallen since joining PACE and those falls have been reported to PACE. Petitioner's daughter indicated that Petitioner had a bad fall prior to joining PACE, which led to hospitalization and the seeking of PACE services in the first place. Petitioner's daughter testified that Petitioner then fell again a couple of months ago. Petitioner's daughter testified that Petitioner's dementia is the greatest concern, and her other daughter will no longer be able to help her as much because she is going back to work full-time soon. Petitioner's daughter testified that there is no water in Petitioner's home, and it would cost tens of thousands of dollars to fix. Petitioner's daughter indicated that her sister cannot take Petitioner in, and she lives out of state so there is no one else that could take Petitioner. Petitioner's daughter testified that Petitioner does go to neighbor's homes for various things but that her concern is that, because of Petitioner's dementia, she does not always know the difference between day and night and sometimes bothers her neighbors in the middle of the night. Petitioner's daughter noted that if Petitioner were moved to another neighborhood, her neighbors might not be so understanding, and it could even be dangerous.

Petitioner's daughter testified that Petitioner does not know what to do in the case of an emergency, contrary to PACE's assertion. Petitioner's daughter also indicated that, contrary to PACE's assertion, Petitioner is not going to neighbor's homes asking to be taken to the store because she has no money. Petitioner's daughter explained that she and her sister had to takeover paying Petitioner's bills because Petitioner went over eight months without paying the bills. Petitioner's daughter testified that Petitioner does not have multiple friends who visit and help her, contrary to PACE's assertion – she only has one friend who visits on occasion. Petitioner's daughter testified that Petitioner's short-term memory is terrible, and she is only able to survive in the community now

because her other daughter is assisting so much. Petitioner's daughter also noted that her sister has to help Petitioner shower because Petitioner will just stand under the water unaware if she has actually bathed or not. Petitioner's daughter also indicated that sometimes her sister has to help Petitioner dress. Petitioner's daughter also noted that the only reason Petitioner has not had any kitchen safety concerns is because her sister only buys Petitioner microwaveable meals.

Petitioner's daughter testified that Petitioner does get meals on wheels but that the reason she has gained weight recently is because she is eating at her other daughter's house and sometimes forgets that she has already eaten. Petitioner's daughter testified that while Petitioner does have a device that helps with her medication, the device does not help with her insulin and Petitioner cannot always remember whether she has taken her insulin or not. Petitioner's daughter testified that one of the reasons Petitioner does not always allow caregivers in the home is because the caregivers are always different. Petitioner's daughter testified that if Petitioner were in an ALF, she might do better with more consistent caregivers, as well as better medication management and regularly scheduled meals. Regarding wandering, Petitioner's daughter testified that the reason Petitioner is able to find her way home now is because she has lived in the neighborhood for 15 years. Petitioner's daughter worries that if she moves to a new neighborhood, she would get lost.

Given the above findings of fact and applicable policies, the undersigned Administrative Law Judge finds that Respondent properly denied Petitioner's request.

As indicated above, PACE provides an alternative to traditional nursing facility care in order to "[e]nable frail, older adults to live in the community as long as medically and socially feasible"; and, to be eligible for PACE enrollment, applicants must be "capable of safely residing in the community without jeopardizing health or safety while receiving services offered by the PACE organization." Here, Petitioner has failed to prove, by a preponderance of the evidence, that PACE erred in its determination. Upon Petitioner's request for ALF placement, PACE conducted numerous comprehensive, in-person assessments of Petitioner, including assessments by a Primary Care Physician, a Registered Nurse, a Social Worker, an Occupational Therapist, a Physical Therapist, a Respiratory Therapist, a Registered Dietician, and a Home Care Coordinator. All of these professionals concluded that Petitioner is safe to remain in the community with PACE services. A review of these assessments shows that despite Petitioner's serious medical conditions, including dementia, Petitioner is mostly independent in her ADL's and is doing fairly well with the services in place. Petitioner has also shown that she is able to safely go out into the neighborhood to seek assistance when needed. PACE has also indicated that if Petitioner's condition deteriorates further, or if her daughter is no longer able to provide as much support, more services are available to allow her to remain independent in the community, including a video monitoring system.

Of course, it is not safe for Petitioner to remain in her current home, without running water, on a long-term basis. However, PACE has offered to help Petitioner and her daughters, move Petitioner to a more suitable living arrangement in the community. If

Petitioner's daughters' concerns about Petitioner living in a new community come to fruition, then they can request that Petitioner be reassessed for placement in an ALF. In addition, it must be pointed out, that Petitioner's daughters are free to seek placement for Petitioner in an ALF on their own if they no longer wish to do so with the assistance of PACE. However, based on the evidence presented, PACE's decision should be upheld.

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 an assisted living facility.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is AFFIRMED.



RM/SB

Robert J. Meade
Administrative Law Judge

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



Authorized Hearing Rep.

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