



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: November 10, 2021
MOAHR Docket No.: 21-003988
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 and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on November 2, 2021. [REDACTED], Petitioner's daughter, appeared and testified on Petitioner's behalf. Shannon Duffey, Compliance Specialist, represented Respondent, Senior Community Care of Michigan (Department), a Program of All-Inclusive Care for the Elderly (PACE) organization. Christine Jodoin, RN, Director, appeared as a witness for Department.

Exhibits:

Petitioner None

Department A – Hearing Summary

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. Department 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 █-year-old woman, who suffers from dementia and has been diagnosed with bilateral hearing loss, chronic diastolic heart failure, congestive heart failure, peripheral vascular disease, and abnormal weight loss. (Exhibit A, p 23; Testimony)

3. Petitioner currently resides with her █-year-old husband. Petitioner's husband is tired and frail due to advanced age and has expressed that he is overwhelmed. Petitioner's husband also reported that the chore providers for Petitioner should spend less time socializing with Petitioner and more time performing assigned tasks. (Exhibit A, p 31; Testimony)
4. On July 28, 2021, Petitioner's daughter requested Petitioner be placed in an assisted living facility. (Testimony)
5. On or around August 2, 2021, Department performed several assessments and determined Petitioner did not suffer from any significant decline in physical or cognitive status and that Petitioner was capable of living independently within her home with PACE services and therefore did not have a medical need for placement. (Exhibit A, p 2; Testimony)
6. As of August 2, 2021, Petitioner was approved for home chore benefits in the amount of 1 hour and 15 minutes a day. (Testimony)
7. On August 2, 2021, Petitioner requested a local level appeal. (Exhibit A, p 4; Testimony.)
8. On or around August 17, 2021, the Department upheld the August 2, 2021, determination finding Petitioner ineligible for assisted living placement. (Exhibit A, pp 3-6; Testimony)
9. On August 31, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received Petitioner's 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 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.¹

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 Department denying the request on the basis that other services can meet Petitioner's needs while keeping Petitioner in her home.

One of the Department's witnesses testified that Petitioner was able to remain in her home and did not require placement in an assisted living facility. The witness went on

¹ Medicaid Provider Manual, PACE, April 1, 2021, pp 1-3.

to indicate Petitioner's needs were met through the approval of home chore services, occupational therapy, and physical therapy.

Petitioner's daughter argued that although Petitioner was approved for services, the services that were approved were not being provided. Petitioner's daughter specifically indicated that trash was not being removed, meals were not being made, and soiled bedding was not being removed or washed. Petitioner's daughter indicated she had not filed any recipient rights complaints or other internal grievances but mentioned that she was unaware of these options.

The Department did not provide a record of work performed, or logs to indicate the times actually worked. The Department did indicate that Petitioner has a right to refuse services but failed to show any documentation to indicate Petitioner was refusing services. But, even if the Department could show a record of Petitioner refusing services, I do not know if it would be appropriate to not provide the services when the Department acknowledges that Petitioner is not her own decision maker.²

Given the above findings of fact and applicable policies, the undersigned Administrative Law Judge finds that Respondent improperly denied Petitioner's request. The record indicates there are significant obstacles that may be preventing Petitioner's basic care needs from being met. The record indicates Petitioner requires constant human assistance for many of Petitioner's Activity of Daily Living (ADL)³ needs and that Petitioner's husband has his own significant health issues that prevent him from providing for all of Petitioner's needs. Given these findings, a new assessment should be performed to show that these issues were adequately addressed/considered prior to deciding to deny placement.

² Exhibit A, p 6.

³ Exhibit A, p 13.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Department improperly denied Petitioner's request for placement in an assisted living facility.

IT IS, THEREFORE, ORDERED that:

Department's decision is REVERSED.

The Department is ordered to perform a new assessment to determine Petitioner's eligibility for assisted living placement.

CA/dh

J. Arendt
Corey Arendt
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 -Dept Contact

Roxanne Perry
400 S Pine St
Capitol Commons
Lansing, MI 48909

Authorized Hearing Rep.

MI

Petitioner

MI

Community Health Rep

Senior Community Care of Michigan
Attn: Shannon Duffey,
Compliance Coordinator
1921 E Miller Rd
Lansing, MI 48911