[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: October 12, 2021
MOAHR Docket No.: 21-004033
Agency No.:
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 September 30, 2021. [redacted], Petitioner's son, appeared and testified on Petitioner's behalf. Sonja Love Felton, Executive Director appeared and testified on behalf of Huron Valley PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Lequel Moore, Social Work Manager, also testified as a witness for Respondent.

During the hearing, Respondent submitted five exhibits that were admitted into the record as Exhibits A-E. Petitioner did not submit any exhibits.

ISSUE

Did Respondent properly deny Petitioner's request for permanent placement in a nursing facility?

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 one hundred and [redacted] ([redacted]) year-old who is enrolled in both Medicaid and Medicare. (Exhibit B, page 1).

3. Since February 1, 2021, Petitioner has also been enrolled in PACE and

receiving her Medicaid and Medicare services through Respondent. (Exhibit D, page 4; Testimony of Social Work Manager).

4. She received those services while living out in the community, with her daughter as her primary care provider. (Exhibit D, pages 5, 10; Testimony of Petitioner's representative).

5. However, Petitioner's daughter was subsequently diagnosed with cancer and, due to that diagnosis and effects of treatment, is unable to care for Petitioner. (Exhibit D, pages 2, 5; Testimony of Petitioner's representative).

6. Petitioner's other children and natural supports are also unable to care for her. (Exhibit D, page 5; Testimony of Petitioner's representative).

7. Due to Petitioner's primary caregiver's serious medical concerns and inability to care for Petitioner, Respondent approved a temporary placement for Petitioner at [redacted]. (Exhibit D, pages 2, 4, 7).

8. On July 28, 2021, Respondent assessed Petitioner while she was at [redacted]. (Exhibit D, pages 1-6).

9. During that assessment, Petitioner's family requested that she remain at [redacted] permanently. (Exhibit D, page 2).

10. Petitioner and her family also subsequently submitted a request for permanent placement in a nursing facility. (Testimony of Petitioner's representative; Testimony of Social Work Manager).

11. On August 11, 2021, Respondent sent Petitioner written notice that her request for a permanent placement had been denied. (Exhibit C, pages 1-4).

12. With respect to the reason for the denial, the notice stated that it "denied request for placement due to other available proactive interventions including respite for participant." (Exhibit C, page 1).

13. Respondent also verbally informed Petitioner's family that, after Petitioner's daughter undergoes her procedure, Petitioner and Respondent can reconsider the request for permanent placement. (Exhibit B, page 3).

14. On August 31, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter with respect to that denial. (Exhibit A, pages 1-3).

15. Petitioner was still placed at [redacted] on the date of

the hearing in this matter, September 30, 2021. (Testimony of Petitioner's representative; Testimony of Social Work Manager).

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 **(text added 4/1/21)** 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.

MPM, July 1, 2021 version
PACE Chapter, pages 1-3
(Internal highlighting omitted)
(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 permanent placement in a nursing facility and Respondent denying the request on the basis that it was not medically necessary due to other available proactive interventions, including respite for participant.

In appealing Respondent's decision, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying the request for permanent placement in a nursing facility. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and Respondent's decision must be affirmed.

It is undisputed that, given the current circumstances and her primary caregiver's health issues, Petitioner could not live in the community at the time of the decision in this case and Respondent therefore approved a temporary placement for Petitioner at [redacted]

[redacted]. Moreover, while Petitioner wants that placement to be permanent, a finding of a permanent placement does not appear to be warranted at this time given Petitioner's current placement, where her needs are being met; the possibility that Petitioner could live in the community again in the future with supports; and Respondent's indication that, after Petitioner's daughter undergoes her procedure, Petitioner and Respondent can reconsider the request for permanent placement.

To the extent Respondent denies another request for permanent placement or terminates Petitioner's current, temporary placement in the future, Petitioner could then request another hearing. Moreover, as discussed during the hearing, Petitioner and her representative are also free to request nursing facility services through Medicaid and, given the similarity between the requirements for PACE services and nursing facility services, she almost certainly meets the requirements for such services. However, such issues are beyond the scope of this proceeding and, with respect to the decision at issue in this case, the undersigned Administrative Law Judge finds that Respondent acted properly.

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 permanent placement in a nursing facility.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

Steven Kibit

SK/sb

Steven Kibit
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
[redacted]

Authorized Hearing Rep.

[redacted]
[redacted]
[redacted], MI
[redacted]

Community Health Rep

Huron Valley PACE
2940 Ellsworth Rd
Ypsilanti, MI
48197
[redacted]

Petitioner

[redacted]
[redacted]
[redacted], MI
[redacted]