

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: January 7, 2022
MOAHR Docket No.: [REDACTED]
Agency No.: 32393928
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 January 5, 2022. Petitioner appeared and testified on her own behalf. Mandy Bozell, Compliance and Privacy Specialist, represented Respondent Senior Care Partners PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Jessica Pressley, Physical Therapist, testified as a witness for Respondent.

During the hearing, Petitioner's Request for Hearing was entered into the record as Exhibit #1, pages 1-4. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-58.

ISSUE

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

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 beneficiary who has been enrolled in PACE and receiving services through Respondent since March 1, 2015. (Exhibit A, page 12).
3. In August of 2021, during a routine assessment, Petitioner requested a

power wheelchair. (Exhibit A, pages 46-47).

4. At that time, Petitioner lived alone in an apartment. (Exhibit A, page 12).
5. She also utilized a walker and power scooter as assistive devices. (Exhibit A, page 12; Testimony of Petitioner).
6. She indicated that she needed a power wheelchair because her power scooter was painful to use. (Exhibit A, pages 46-47; Testimony of Physical Therapist).
7. A Physical Therapist with Respondent subsequently assessed Petitioner and offered several interventions, including physical therapy, a back brace, heating pads, cushions, and back support. (Exhibit A, pages 48-49; Testimony of Physical Therapist).
8. However, Petitioner declined those interventions. (Exhibit A, pages 48-49; Testimony of Physical Therapist).
9. On September 1, 2021, Respondent sent Petitioner written notice that her request for a power wheelchair was denied. (Exhibit A, pages 3-10).
10. With respect to the reason for the denial, the notice stated:

[Petitioner] already has a power mobility option, a personally owned power scooter. Additional interventions have been offered including cushions for comfort in current power scooter and physical therapy. [Petitioner] has declined both.

Exhibit A, page 3

11. Petitioner subsequently filed an Internal Appeal with Respondent regarding the denial of her request for a power wheelchair. (Exhibit A, page 56).
12. Respondent's Internal Appeals Committee then reviewed Petitioner's case, and it determined that the denial should be upheld. (Exhibit A, pages 56-58).
13. On November 8, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter. (Exhibit #1, pages 1-4).
14. After the request for hearing was filed, Petitioner's power scooter broke down and became unusable. (Testimony of Petitioner).

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

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

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 Respondent's decision in light of the information it had at the time the decision was made.

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.

Petitioner was utilizing both a walker and a power scooter as assistive devices at the time of her request and, while Petitioner reported that it was painful to use her scooter, Respondent identified other interventions that could be used to relieve that pain and that rendered a new power wheelchair unnecessary. Moreover, while Petitioner declined those interventions, that decision and her preference for a new wheelchair does not satisfy the applicable medical necessity criteria.

Petitioner did testify during the hearing that, rather than because of pain when using her power scooter, she requested a power wheelchair because the scooter was unstable; and it is undisputed that Respondent failed to consider instability when evaluating the request. However, Respondent's evidence and the testimony of the Physical Therapist contradicted Petitioner's testimony and clearly demonstrated that the sole reason for the request was the alleged pain, especially given that Petitioner also testified that she has a poor memory, and Respondent did not err by failing to consider other reasons for the request.

Petitioner further testified that, after the request for hearing was filed in this case, Petitioner's power scooter broke down and became unusable. However, as discussed above, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information it had at the time the decision was made and, consequently, the subsequent breaking down of the power scooter is not relevant to this case.

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

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/tem


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 Street
Capital Commons
Lansing, MI 48909

Community Health Rep

Senior Care Partners PACE
200 W Michigan Ave #104
Battle Creek, MI 49017

Petitioner

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