



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: March 10, 2022
MOAHR Docket No.: 22-000148
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 23, 2022. Attorney Dan Wojciak appeared on Petitioner's behalf, with Petitioner and [REDACTED], Petitioner's daughter, testifying as witnesses. Michelle Reardon, Quality Assurance Director, appeared and testified on behalf of the Respondent PACE North, a Program of All-Inclusive Care for the Elderly (PACE) organization.

During the hearing, Petitioner submitted a brief with twelve proposed exhibits that were subsequently admitted into the record as Exhibits 1-12. Respondent also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-67.

ISSUE

Did Respondent properly terminate Petitioner's home care services?¹

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 an [REDACTED] year-old Medicaid beneficiary who has been diagnosed with bipolar disorder; hypertension; depression; adrenal insufficiency; low back pain; poor appetite; gastroesophageal reflux disease; microscopic colitis; hypothyroidism; and right hip pain. (Exhibit #1, pages 1, 3-4).

¹ Respondent also reduced Petitioner's Scheduled Center Days (Exhibit #3, pages 1-2), but her representative and guardian indicated during the hearing that Petitioner was not disputing that action.

3. She lives alone. (Exhibit #1, page 1).
4. Since at least November 1, 2020, Petitioner has been enrolled in PACE and receiving services through Respondent. (Exhibit #1, page 1; Exhibit A, page 19).
5. On October 12, 2021, a Nurse Practitioner (NP) with Respondent conducted an annual reassessment of Petitioner. (Exhibit #1, pages 1-5; Exhibit #5, pages 1-2; Exhibit A, pages 27-31).
6. At that time Petitioner's services through Respondent included 2 days per week at the Day Center; 10 meals per week; 3 hours of home care services per week; a personal emergency response system with fall detection; and 2 restorative therapy sessions per week. (Exhibit #1, page 1).
7. The home care included safety care, light housekeeping, shopping, laundry, and medication reminders as necessary. (Exhibit A, pages 7-14).
8. Following the reassessment, the NP recommended that Petitioner's plan of care, including the 3 hours per week of home care, be continued. (Exhibit #5, page 2).
9. That same day, Petitioner was also assessed by a physical therapist (PT). (Exhibit #8, pages 1-3; Exhibit A, pages 33-35).
10. During that assessment, the PT noted that Petitioner has fallen once during the past three months, at a time when she was attempting to paint the trim in her home and was low to the floor. (Exhibit #8, page 1).
11. The PT also advised Petitioner that performing tasks that put her in a squatting position highly increased her risk of falls. (Exhibit #8, page 1).
12. The PT further noted that, while Petitioner had received in the past, it was not necessary now and Petitioner continues to be at functional baseline and independent with all transfers and ambulation. (Exhibit #8, page 3).
13. Petitioner also underwent a Comprehensive Nursing Assessment on October 12, 2021, with no change in her condition or necessary interventions noted. (Exhibit #9, pages 1-2; Exhibit A, pages 39-40).
14. That same day, Petitioner was assessed by an Occupational Therapist (OT) as well. (Exhibit A, pages 23-25).
15. In that assessment, the OT found, with respect to Petitioner's Activities of Daily Living (ADLs) that Petitioner was independent in dressing, toileting, feeding, and transferring from the toilet, bed or chair; but only modified

independent with grooming, bathing, and transferring from the shower chair. (Exhibit A, pages 23-24).

16. With respect to Petitioner's Instrumental Activities of Daily Living (IADLs), the OT also found:

Cooking: Minimum Assistance Her daughter cooks for her and brings meals over. Ppt is able to reheat meals and perform some simple meal prep

Laundry: Minimum Assistance Reports she does some independently, does bring sheets into Pace occasionally. Daughter helps when needed.

Housekeeping: Provided

Shopping: Provide

Exhibit A, page 24

17. The OT did not recommend any skilled therapy. (Exhibit A, page 25).
18. On October 12, 2021, Petitioner also underwent a Home Safety Assessment. (Exhibit A, pages 43-44).
19. The recommendation from that assessment was for Petitioner to continue with the same services, including 3 hours of home care services per week. (Exhibit A, page 44).
20. On November 16, 2021, an Interdisciplinary Team (IDT) within Respondent, including staff from different disciplines, met and reviewed Petitioner's case. (Exhibit A, page 15).
21. On November 17, 2021, Respondent sent Petitioner written notice that her home care services would be terminated as of November 29, 2021. (Exhibit #2, pages 1-2).
22. With respect to the reason for the action, the notice stated: "you have alternative methods to complete your chores." (Exhibit #2, page 1).
23. That same day, Petitioner's Home Care Coordinator with Respondent noted:

Informed [Petitioner] of the IDT's decision to stop her chore services. [Petitioner] is independent with her ADLs, is able to do home improvement projects on her own such as

painting her fence and has family members who provide assistance and are supportive.

Exhibit A, page 5

24. On November 20, 2021, Petitioner filed an internal appeal with Respondent regarding the decision to terminate her home care services. (Exhibit #11, pages 1-2; Exhibit A, pages 17-18).
25. In that appeal, Petitioner's daughter asserted that Petitioner does not have alternative methods to complete her chores. (Exhibit #11, page 1).
26. On December 23, 2021, Respondent sent Petitioner written notice that the internal appeal was denied. (Exhibit #4, page 1).
27. With respect to the reason for the denial, the notice stated:

The elimination of home care was upheld because the IDT assessments show you are independent in your activities of daily living and you have family support in the community.

Exhibit #4, page 1

28. On January 19, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding Respondent's decision. (Exhibit #12, pages 1-2).

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 eligibility for it, the Medicaid Provider Manual (MPM) provides:

SECTION 1 – GENERAL INFORMATION [CHANGE MADE 4/1/21]

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)** 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 . . .

*MPM, October 1, 2021 version
PACE Chapter, pages 1-2
(internal highlighting omitted)
(italics added for emphasis)*

Here, Respondent decided to terminate Petitioner's home care services, with the original notice stating that Petitioner had alternative methods to complete her chores and a subsequent notice stating that Petitioner was independent in her ADLs and had family support in the community.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred.² Moreover, the undersigned Administrative Law

² Petitioner's hearing brief asserts that the burden of proof should be on Respondent, but it ultimately does not matter here as Petitioner would prevail under either standard given the conclusions of law made below.

Judge is limited to reviewing the 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 met that burden of proof and Respondent's decision must therefore be reversed.

Petitioner was previously approved for the services; they were undisputedly being utilized; and, while Petitioner underwent a number of assessments by professionals from multiple disciplines, none identified any significant changes in Petitioner's functioning or natural supports that would warrant terminating her services.

In fact, rather than recommending a termination of services, the assessments that included a recommendation regarding Petitioner's services, *i.e.*, the annual assessment with the NP and the home safety assessment, actually recommended that Petitioner continue with the same services, including the three hours of home care services per week.

Moreover, while Respondent correctly notes that, as found by the OT, Petitioner is independent in her ADLs, Petitioner was not receiving home care services for assistance with her ADLs and the OT also specifically noted that assistance was being provided with housekeeping and shopping, with no finding from the OT that Petitioner could complete those tasks on her own.

Additionally, both Petitioner and her daughter credibly testified regarding Petitioner's continuing need for home care services, with none of that testimony contradicted by Respondent or disputed by anyone with personal knowledge.

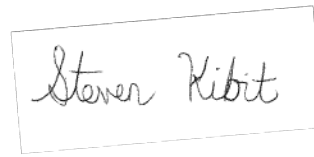
Accordingly, for the reasons discussed above, the undersigned Administrative Law Judge finds that Petitioner has met her burden of proof and that Respondent's decision must therefore be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent improperly terminated Petitioner's home care services.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **REVERSED**, and it must initiate a reinstatement of Petitioner's home care services.

A rectangular box containing a handwritten signature in cursive script that reads "Steven Kibit".

SK/tm

Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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).

Either 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
MDHHS-MSA-PACE@michigan.gov

Counsel for Petitioner

Daniel R. Wojciak
15851 S. US 27, Suite 73
Lansing, MI 48906
dwojciak@meji.org

Community Health Rep

PACE North
Attn: Michelle Reardon
2325 Garfield Rd N
Traverse City, MI 49686
mreardon@pacenorth.org

Petitioner

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

Authorized Hearing Rep.

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