



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 23, 2022
MOAHR Docket No.: 22-003070
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* upon Petitioner's request for a hearing.

After due notice, a hearing was held on August 18, 2022. [REDACTED], Petitioner's daughter/caregiver, appeared and testified on Petitioner's behalf. [REDACTED], Petitioner's granddaughter, appeared as a witness. Sonja Love Felton, Executive Director, appeared and testified on behalf of Respondent, Huron Valley PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Marvin Erisostomo, Occupational Therapist (OT), Rati Patni, Physical Therapist (PT), Hannah Zomermaand, Social Worker, and Marie Young, Participant Care Manager, appeared as witnesses for Respondent.

ISSUE

Did Respondent properly authorize Petitioner's Home Care hours through the Program of All-Inclusive Care for the Elderly (PACE)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Huron Valley PACE is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS or Department) and oversees the PACE program in Petitioner's geographical area. (Exhibit A; Testimony).
2. Petitioner is a female Medicaid beneficiary who has been receiving services through PACE since February 1, 2022. (Exhibit B; Testimony).
3. In November 2021, Petitioner's leg was amputated above the knee, and

she received a prosthetic in May 2022. Petitioner also suffers from numerous other comorbidities, such as acute kidney injury, ectropion bilateral, left leg edema, glaucoma, iron deficiency, hyponatremia, aortic regurgitation, atrial fibrillation, bradycardia, constipation, femoral artery thrombosis, gastric cancer, and hypertension. (Exhibit E; Testimony).

4. On February 15, 2022, PACE completed an assessment of Petitioner's need for Home Care using the Resource Allocation Determination (RAD) tool. Petitioner scored 21 points, which placed her in the "Minimal" need category range of 2 to 8 Home Care hours per week. Petitioner was authorized by PACE to receive 8 Home Care hours per week. (Exhibit D; Testimony).
5. On April 13, 2022, PACE completed another RAD assessment when Petitioner's daughter/caregiver requested additional Home Care hours. Petitioner scored 30 points, which placed her in the "Moderate" need category range of 8 to 15 Home Care hours per week. Petitioner was authorized by PACE to receive 15 Home Care hours per week. (Exhibit D; Testimony).
6. Sometime in late April or early May 2022, Petitioner's daughter/caregiver requested that Petitioner be approved for 40 Home Care hours per week. (Exhibit B; Testimony).
7. On May 6, 2022, PACE's Interdisciplinary Team (IDT) reviewed and denied the request, finding that a RAD tool assessment had just been completed in April 2022 and Petitioner had no change in status since that time. The IDT also noted that Petitioner attended the PACE day center twice per week and was given a shower on one of those days. (Exhibit B; Testimony).
8. On May 6, 2022, PACE sent Petitioner an Adequate Action Notice Denial of Service, denying the request for 40 Home Care hours per week. The Notice included Petitioner's appeal rights. (Exhibit C; Testimony).
9. On July 20, 2022, Petitioner's request for hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A).

CONCLUSIONS OF LAW

The Medical Assistance Program 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:

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

3.11 APPLICANT APPEALS

3.11.C. PACE SERVICES

Noncoverage or nonpayment of services by the PACE organization for a beneficiary enrolled in PACE is an adverse action. If the beneficiary and/or representative disagrees with the noncoverage or nonpayment of services by the PACE organization, they have the right to request an administrative hearing before an administrative law judge. Information regarding the appeal process may be found on the Michigan Administrative Hearing System (MAHS) website. (Refer to the Directory Appendix for website information.) The beneficiary may request continuation of the disputed service with the understanding that he may be liable for the cost of the disputed service if the determination is not made in his favor.

*Medicaid Provider Manual
Program of All-Inclusive Care for the Elderly Chapter
April 1, 2022, pp 1-2, 6*

Here, Petitioner requested an increase in Home Care hours from 15 hours per week to 40 hours per week.

PACE's Participant Care Manager testified that Petitioner enrolled in PACE on February 1, 2022, and underwent a full assessment by the IDT, including social work, therapy, behavioral health, the clinic (medical), homecare, and CENA. Regarding Home Care, PACE's Participant Care Manager testified that PACE uses the RAD tool to determine a range of Home Care hours needed, then the IDT reviews the recommendation and authorizes the hours. PACE's Participant Care Manager testified that Petitioner's first RAD was completed on February 15, 2022, at which time Petitioner scored in the "Minimal" need category with a range of 2 to 8 Home Care hours per week. PACE's Participant Care Manager testified that upon review, the IDT authorized Petitioner to receive 8 Home Care hours per week.

PACE's Participant Care Manager testified that another RAD tool assessment was completed on April 13, 2022, when Petitioner's daughter/caregiver requested an increase in Home Care hours. PACE's Participant Care Manager testified that

Petitioner scored in the "Moderate" need category with a range of 8 to 15 Home Care hours per week and the IDT authorized 15 Home Care hours per week. PACE's Participant Care Manager indicated that Petitioner also comes to the PACE day center twice per week, on Mondays and Wednesdays, and receives a shower on one of those days. PACE's Participant Care Manager testified that Petitioner is very engaged in activities and therapy at the day center, and she enjoys the staff and other participants. PACE's Participant Care Manager testified that they put a translator in place to help Petitioner engage in the activities.

PACE's PT testified that she has worked as a PT for 12 years and has been with PACE for the past 3.5 years. PACE's PT testified that need is based on a comprehensive assessment and, since Petitioner now has a prosthetic, they are working on walking, balance, strength and endurance. PACE's PT indicated that she has provided regular PT to Petitioner since Petitioner joined the program, first in Petitioner's home and now at the day center. PACE's PT testified that Petitioner has made tremendous progress since obtaining her prosthesis in May 2022. PACE's PT noted that she is involved in the RAD assessment process and believes the hours authorized are appropriate for Petitioner's needs. PACE's PT testified that Petitioner can be left alone for short periods of time and has good safety awareness.

PACE's OT testified that he has worked with Petitioner since she joined the program and she has made tremendous progress. PACE's OT noted that Petitioner is motivated to work in therapy and is able to walk with stand by assist when using her prosthetic. PACE's OT testified that Petitioner is able to maintain a consistent gait pattern, walks properly, is cognitively intact and has good safety awareness. PACE's OT noted that Petitioner has one reported fall since she joined the program, which occurred at home in the bathroom on March 24, 2022. PACE's OT also opined that Petitioner could be left alone for brief periods of time. PACE's OT noted that while Petitioner needs assistance transferring on and off the toilet, she can use the toilet and clean herself up on her own.

PACE's Social Worker testified that she has worked with Petitioner since February 2022 and was part of the RAD tool assessment for Home Care hours. PACE's Social Worker testified that she completed a cognitive assessment of Petitioner and Petitioner's cognition is good as she is able to make her needs known, she is not impulsive, and she has safety awareness. PACE's Social Worker also opined that Petitioner can be alone for short periods of time and that the 15 hours per week of Home Care authorized are appropriate for Petitioner's needs.

Petitioner's daughter/caregiver testified that Petitioner needs assistance going to the bathroom and is too shy to ask for assistance on the days she goes to the day center, so she holds it until she get home. Petitioner's daughter/caregiver indicated that Petitioner is 85 years old and had her leg amputated above the knee on November 1, 2021. Petitioner's daughter/caregiver testified that Petitioner was in very poor health, and it was a very difficult time. Petitioner's daughter/caregiver indicated that after the surgery, Petitioner was discharged to a rehabilitation center for three to four weeks and then to her home. Petitioner's daughter/caregiver testified that they have set up the first floor of the home to meet all of Petitioner's needs.

Petitioner's daughter/caregiver testified that PT was coming from U of M after the surgery two to three times per week and they are the ones who recommended PACE. Petitioner's daughter/caregiver indicated that Petitioner was enrolled in PACE on February 1, 2022, and they are very grateful for the care she receives through PACE. Petitioner's daughter/caregiver noted that her mother likes going to the PACE day center very much, she's excited to go there, and the people are very nice. Petitioner's daughter/caregiver testified though, at home, it is a different story. Petitioner's daughter/caregiver noted that the two days per week that Petitioner goes to PACE really only amount to about three hours per day at the actual center as most of the other time is taken up with transportation. Petitioner's daughter/caregiver testified that including the 15 hours of Home Care per week, there are still 69 waking hours a week that she is taking care of Petitioner. Petitioner's daughter/caregiver testified that she has to do everything for Petitioner.

Petitioner's granddaughter testified that she thinks the denial of 40 hours per week is wrong and may be due to discrimination. Petitioner's granddaughter indicated that she believes the RAD tool is a poor measurement of a person's needs and here it was used inaccurately and includes false information. Petitioner's granddaughter testified that it is ridiculous that the tool allocates 0 points for laundry and housekeeping if the family has to do those tasks anyway. Petitioner's granddaughter noted that Petitioner is often incontinent, which leads to a huge increase in laundry. Petitioner's granddaughter testified that the inaccuracy of the RAD tool can be seen by comparing the February results with the April results. Petitioner's granddaughter noted that Petitioner was found to be independent with transferring and walking in February but wheelchair bound in April, which makes no sense. Petitioner's granddaughter also noted that Petitioner was awarded zero points for behavioral status in April, but she still needed motivation in April. Petitioner's granddaughter also noted that the tool indicates that Petitioner can eat by herself, but it does not consider preparing the food, cleaning up, and shopping for groceries. Petitioner's granddaughter also noted that the February RAD assessment indicates that Petitioner could walk independently with a cane, which was not true. Petitioner's granddaughter testified that as a social science researcher, and just looking at the RAD tool logically, the tool is deficient and misses the human factor.¹

Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in denying her request for 40 Home Care hours per week. Based on the evidence presented, this Administrative Law Judge finds that Petitioner has failed to meet this burden of proof. Here, Respondent presented sufficient evidence that they properly and thoroughly assessed Petitioner for Home Care hours in April 2022 and Petitioner's condition has not worsened since the April 2022 assessment. In fact, it appears that Petitioner's condition has improved somewhat since April 2022, especially with the receipt of her prosthetic in May 2022. The undersigned has carefully reviewed the RAD assessment tool for April 2022 and does not find the April 2022 tool deficient in any way. If there were mistakes in the February 2022 RAD assessment, as Petitioner claims, they were corrected in the April assessment. And, as PACE's representative

¹ Petitioner's granddaughter also forwarded evidence following the hearing that Petitioner did not receive her prosthetic until May 2022, and was still having issues with it to date.

indicated at the hearing, PACE must use a standardized tool to determine a range of service authorizations to remove discrimination and bias from the program. The entire IDT then reviews the results of the RAD and makes an individual assessment and authorization for each participant. Petitioner also comes into the PACE agency each Monday and Wednesday and receives a shower at that time, which reduces her need for home care and gives Petitioner's daughter/caregiver a break from direct care. Petitioner has failed to provide any evidence that any additional hours of Home Care are medically necessary.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to meet the burden of proof and that Respondent properly denied Petitioner's request for increased Home Care hours.

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 an increase in Home Care hours.

IT IS THEREFORE ORDERED that:

The Respondent's decision is AFFIRMED.



RM/dh

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

Via Electronic Mail:

DHHS Department Contact

Roxanne Perry
Capitol Commons
400 S. Pine St.
Lansing, MI 48909
MDHHS-MSA-PACE@michigan.gov

Community Health Rep

Huron Valley PACE
2940 Ellsworth Rd.
Ypsilanti, MI 48197
fgearhart@hvpac.org

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED] MI [REDACTED]