

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 14, 2022
MOAHR Docket No.: 22-003394
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 September 6, 2022. Petitioner appeared and testified on his own behalf. Mandy Bozell, Compliance and Privacy Specialist, appeared on behalf of Respondent Senior Care Partners PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Stephanie Picknor, Physical Therapist, and Mallory Inman, Center Manager, from Respondent also testified as witnesses.

During the hearing, the following exhibits were admitted into the record without objection:

- Exhibit A: Advance Action Notice
- Exhibit B: Face Sheet
- Exhibit C: Care Plan Detail Report
- Exhibit D: Service Summary Report
- Exhibit E: Summary of Case
- Exhibit F: Hearing Request
- Exhibit G: SDR Notes

ISSUE

Did Respondent properly deny Petitioner's request for a lift chair?

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] ([REDACTED]) year-old Medicaid beneficiary who has been enrolled in PACE and receiving services through Respondent. (Exhibit B, pages 1-9).
3. On or about July 14, 2022, and after he fell out of his recliner chair, Petitioner requested a lift chair through Respondent. (Exhibit G, page 1).
4. A physical therapist then assessed Petitioner the next day and determined that the recliner was not a viable or safe seating surface for Petitioner, but that Petitioner is able to independently and safely transfer from stable surfaces that are of standard height, such as his bed, his power wheelchair, and the toilet. (Exhibit G, page 3; Testimony of Physical Therapist).
5. On July 18, 2022, Respondent sent Petitioner an Advance Action Notice stating that his request for a lift chair had been denied. (Exhibit A, pages 1-8).
6. With respect to the reason for the action, the notice stated: "Team has denied a lift chair for participant. [Petitioner] is able to independently transfer from surfaces that are standard height and stable." (Exhibit A, page 1).
7. On August 2, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed by Petitioner in this matter regarding the Respondent's decision. (Exhibit F, pages 1-5).

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

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 . . .

*MPM, July 1, 2022, version
PACE Chapter, pages 1-2
(Emphasis added)*

Here, Respondent denied Petitioner's request for a lift chair pursuant to the above policies and on the basis that the requested chair is 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 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 failed to meet that burden of proof and Respondent's decision must therefore be affirmed.

Even though lift chairs are not covered items under Medicaid¹, the above policy still provides that Respondent would be required to cover the chair if it is determined necessary by the interdisciplinary team. However, there has been no demonstration of such medical necessity in this case. While Petitioner may have testified about a history of falls, it is also undisputed that he demonstrated an ability to independently and safely transfer from stable surfaces that are of standard height, such as his bed, his power wheelchair and the toilet, when being assessed by the physical therapist. Accordingly, while Petitioner may no longer be able to safely use his current recliner and a lift chair would be more convenient for him as a place to sit during the day, that lift chair is not medically necessary given his abilities.

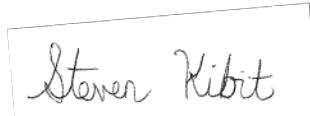
DECISION AND ORDER

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 lift chair.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.

SK/dh


Steven Kibit
Administrative Law Judge

¹ See MPM, July 1, 2022 version, Medical Supplier Chapter, page 25.

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).

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:

Community Health Rep.
Senior Care Partners PACE
200 W. Michigan Ave., #104
Battle Creek, MI 49017
A.Bozell@seniorcarepartnersmi.org

DHHS Department Contact
Roxanne Perry
400 S. Pine St.
LANSING, MI 48909
MDHHS-MSA-PACE@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]