



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: October 4, 2022
MOAHR Docket No.: 22-003698
Agency No.: 38016952
Petitioner: [REDACTED]
Respondent: PACE of Southwest Michigan

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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 September 27, 2022. Petitioner appeared and testified on his own behalf. Laura Rymberg, Quality Improvement Specialist, appeared on behalf of Respondent, PACE of SW Michigan (Department). Dr. Brentz and Naomi Prahoveanu, appeared as witnesses for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did Respondent properly deny Petitioner's request for an air conditioner 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. Department is an organization that contracts with the Michigan Department of Health and Human Services (MDHHS) and oversees PACE in Petitioner's geographical area. (Exhibit A; Testimony).
2. Petitioner is Medicaid beneficiary receiving services through PACE. (Exhibit A; Testimony).
3. On or around July 6, 2022, Petitioner requested from the Department, an

air conditioning unit for his apartment. Petitioner indicated he has recently been experiencing shortness of breath and using his inhaler more. (Exhibit A; Testimony).

4. Prior to July 8, 2022, the Department sent Petitioner a notice of denial, denying Petitioner's request for an air conditioning unit. The notice indicated Petitioner's request was being denied due to Petitioner having access to air conditioned areas in his building and the ability to access those areas independently. (Exhibit A; Testimony).
5. On August 4, 2022, the Department's Internal Appeals Team, reviewed Petitioner's case and upheld the denial of Petitioner's request for an air conditioning unit. The Team determined Petitioner was not going through an economic hardship and could pay for an AC unit on his own and that Petitioner not having a unit in his home did not pose a safety risk to Petitioner. (Exhibit A; Testimony.)
6. On August 4, 2022, the Department sent Petitioner a notice that the Department was upholding the initial denial. (Exhibit A).
7. On September 1, 2022, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (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

3.13.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 MOAHR 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.¹

Department witnesses testified, Petitioner's request for an air conditioning unit was denied based on Petitioner having access to air conditioned areas within his complex and the ability to access them independently. The Department also indicated Petitioner did not have a financial burden preventing him from purchasing one himself and that he had no health issues of concern that would necessitate a need for an air conditioning unit.

Petitioner indicated he does have financial issues preventing the purchase of a unit and that he does not have access to air conditioned spaces within his complex.

Petitioner bears the burden of proving by a preponderance of the evidence that Department erred in denying his request for an air conditioning unit. Based on the above testimony and evidence, this Administrative Law Judge finds that Petitioner has failed to meet this burden of proof. Although Petitioner disagrees with the Department's position, he did not provide financial statements or letters from building management regarding air conditioned spaces to corroborate his claims.

Accordingly, this Administrative Law Judge finds that Petitioner has failed to meet the burden of proof and that Respondent's decision in denying the request for an air conditioning unit must be sustained.

¹ Medicaid Provider Manual, Program of All-Inclusive Care for the Elderly, July 1, 2022, pp 1-2, 7-8.

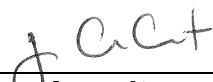
DECISION AND ORDER

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 air conditioning unit.

IT IS THEREFORE ORDERED that:

The Respondent's decision is AFFIRMED.

CA/dh



Corey Arendt
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
400 S Pine St.
Lansing, MI 48909
MDHHS-MSA-PACE@michigan.gov

Respondent

Laura Rynberg
c/o PACE of Southwest Michigan
2900 Lakeview Avenue
Saint Joseph, MI 49085
laurarynberg@paceswmi.org

Via First Class Mail:

Petitioner

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