



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
Date Mailed: October 27, 2022
MOAHR Docket No.: 22-003965
Agency No.: 28278357
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 October 13, 2022. Petitioner appeared and testified on her own behalf. Denese Brown, Center Director appeared and testified on behalf of Respondent Huron Valley PACE, a Program of All-Inclusive Care for the Elderly (PACE) organization. Dejanique Hawkins, Social Worker; Marvin Crisostomo, Occupational Therapist; and Denise McGowan-Smith, Rehab Manager; also testified as witnesses for Respondent.

During the hearing, Petitioner's request for hearing was entered as Exhibit A and the notice of denial was entered as Exhibit C. Respondent also submitted other proposed exhibits, but they were not admitted because Petitioner had not received them prior to the hearing.

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. Since February of 2021, Petitioner has been enrolled in PACE and receiving services through Respondent. (Testimony of Social Worker).

3. At the time Petitioner enrolled, she was bedbound. (Testimony of Social Worker).
4. Through her services with Respondent, including in-home skilled therapies, Petitioner is no longer bedbound, and she is able to use a wheelchair to maneuver around her home. (Testimony of Social Worker; Testimony of Rehab Manager).
5. Petitioner also uses a walker, but only when someone is around to monitor her. (Testimony of Petitioner).
6. On or about August 19, 2022, Petitioner requested a lift chair through Respondent. (Testimony of Occupational Therapist).
7. An occupational therapist subsequently assessed Petitioner, and, during that assessment, he observed Petitioner independently transferring from her wheelchair into a recliner and from the recliner to her wheelchair. (Testimony of Occupational Therapist).
8. Petitioner is also able to independently transfer from her hospital bed to her wheelchair and from her wheelchair to her bed. (Testimony of Petitioner).
9. On August 22, 2022, Respondent sent Petitioner an Adequate Action Notice stating that her request for a lift chair had been denied. (Exhibit C, pages 1-2).
10. With respect to the reason for the action, the notice stated: **"IDT Denied this request because per assessment, the lift chair may reduce leg strength and independence to transfer for the patient."** (Exhibit C, page 1).
11. On September 14, 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 A, 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

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 and would instead reduce Petitioner's leg strength and independence in transferring.

In support of that decision, Respondent's witnesses describe the tremendous improvement Petitioner has made since joining PACE and her transition from being bedbound to being mobile using a wheelchair or walker.

The Occupational Therapist also testified that he assessed Petitioner following her request and found that a lift chair was not medically necessary given Petitioner's current abilities. He further testified that, rather than helping Petitioner in the long-term, a lift chair would actually reduce Petitioner's independence by making her more reliant on equipment.

The Rehab Manager similarly testified that Respondent's intent is not to make things harder for Petitioner, but to ensure her functioning and mobility, with Petitioner needing to use her legs. She also testified that Petitioner may need new furniture if her current recliner is too difficult for her, but not a lift chair.

In response, Petitioner described how she gets out of her hospital bed into her wheelchair using equipment and the strain that places on Petitioner's injured arms. She also testified that, while she can sit in her wheelchair or transport chair, doing so all day is painful. She further testified that she has an old recliner, but that it is difficult to use, with a potential for Petitioner getting stuck, and that a lift chair would allow Petitioner to not use her shoulders all the time. Petitioner further asserted that a lift chair would help her get up and walk more rather than weakening her, and that her goal is to walk around her house. She also indicated that she is interested in a new recliner, but that, even with a new recliner, she would be more active with a lift chair.

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 testified regarding why she thinks the lift chair would help her, her current abilities, including her ability to transfer, are not in dispute and Respondent's witnesses credibly explained why, in their professional opinions, a lift chair would actually be detrimental to Petitioner in the long-term. Accordingly, while Petitioner may no longer be able to safely use her current recliner and a lift chair would be more convenient for her as a place to sit during the day, that lift chair is not medically necessary given her abilities and long-term goals.

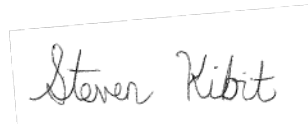
¹ See MPM, July 1, 2022 version, Medical Supplier Chapter, page 25.

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**.

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

SK/sj

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

Via Electronic Mail:

DHHS Department Contact

Roxanne Perry
400 S PINE ST
LANSING, MI 48909
MDHHS-MSA-PACE@michigan.gov

Community Health Representative

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

Via First Class Mail :

Petitioner

[REDACTED]