

## ISSUE

Did Respondent properly reduce Petitioner's home care services?

### *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 87-year-old who has been diagnosed with, among other conditions, major neurocognitive disorder – dementia, mixed vascular and Alzheimer's type; coronary artery disease; anxiety disorder, generalized, with panic disorder without agoraphobia; depression; malnutrition; a history of falls; degenerative disc disease; hyperlipidemia; and diabetes mellitus type 2. (Exhibit A, pages 55-58).
3. Due to her diagnoses and symptoms, which include wandering, falling and total incontinence, Petitioner requires near constant supervision and total assistance with almost all her Activities of Daily Living (ADLs). (Exhibit A, page 7).
4. Petitioner lives with her daughter, who is also her power of attorney and sole natural support. (Exhibit A, page 7).
5. Petitioner's daughter works over 40 hours a week at her regular job, Mondays through Fridays, while also owning her own business and working there after regular weekday hours. (Exhibit A, page 7).
6. In 2018, Petitioner enrolled in PACE through Respondent. (Testimony of Respondent's representative).
7. As part of Petitioner's services, Respondent authorized 44 hours per week of home care services. (Exhibit A, page 10).
8. Petitioner was also attending Respondent's center five days a week. (Exhibit A, page 10).
9. On September 11, 2023, Petitioner requested that her home care hours be increased from 44 hours per week to 55 hours per week because, while Petitioner was previously going to Respondent's center Monday through Friday, she was now only going there on Fridays because of her anxiety. (Exhibit A, page 10; Testimony of Petitioner's representative).

10. Respondent also found that Petitioner had reduced her PACE attendance to one visit per week because Petitioner was becoming anxious coming and going to the center from home. (Exhibit A, page 20; Testimony of Respondent's representative).
11. 55 hours per week of home care services is more than a typical client of Respondent's is approved for. (Testimony of Respondent's representative).
12. Respondent approved the requested increase for 60 days to provide increased support while meeting with Petitioner's representative to address scheduling care and caregiver burnout. (Exhibit A, page 12).
13. While only initially approved for 60 days, Respondent has reauthorized the 55 hours per week of home care services since September 11, 2023. (Exhibit A, pages 14-45; Testimony of Respondent's representative).
14. No changes for Petitioner were noted by Respondent during assessments completed in February of 2024, August of 2024, and September of 2024. (Exhibit A, pages 17, 25, 44).
15. By September of 2024, Petitioner's representative was privately paying for respite care for Petitioner. (Exhibit A, page 51).
16. Respondent also reviewed Petitioner's case in September of 2024, with Respondent's interdisciplinary team (IDT) recommending that Petitioner's home care hours be reduced to 40 hours per week and her attendance at the PACE center increased. (Exhibit A, pages 40, 62).
17. On October 4, 2024, during another assessment, Petitioner's representative requested that Petitioner's home care services be maintained at 55 hours per week. (Exhibit A, page 7).
18. At that time, she also reported that Petitioner's dementia had continued to advance, with increased confusion and anxiety as the day wears into evening. (Exhibit A, page 7).
19. On October 7, 2024, Respondent sent Petitioner's representative written notice that Petitioner's request to maintain 55 hours per week of home care services would be denied, and that only 40 hours per week of services would be approved. (Exhibit A, pages 4-5).
20. With respect to the reason for the denial, the notice stated:

The reason for this action is due to the team recommending the Participant utilize 40 hours/week approved based on the updated home care assessment guidelines and utilization of increased PACE attendance to

provide supervision and socialization when daughter is at work. The legal basis for this decision is 42 CFR Part 460.102(d)(1)(ii)(D).

*Exhibit A, page 4*

21. Petitioner subsequently requested an Internal Appeal with Respondent regarding the reduction in her services. (Exhibit A, page 6).
22. On November 5, 2024, Respondent sent Petitioner written notice that, following review of her Internal Appeal, it had been determined that the reduction in services would be upheld. (Exhibit A, pages 63-64).
23. With respect to the reason for the decision, the notice stated in part:

The reason for this action is due to the most recent assessment and Homecare Guideline Tool the 40 hours/week meets the participants' [sic] needs and provides coverage for the daughter/POA's full-time job and other options to support the participant/daughter work schedule have not yet been explored. The legal basis for this decision is 42 CFR Part 460.102(d)(1)(ii)(D).

*Exhibit A, page 64*

24. On January 13, 2025, MOAHR received the request for hearing filed by Petitioner in this matter regarding Respondent's decision to reduce her home care services. (Exhibit A, pages 67-75).

### *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 applicable version of the Medicaid Provider Manual (MPM) provides in part:

### **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
- Diagnostic services
- 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

*MPM, October 1, 2024 version  
PACE Chapter, pages 1-2  
(Italics added for emphasis)*

Here, Petitioner has been approved for PACE services at all times relevant to this matter; and it is only a reduction in her home care services that is in dispute, with Respondent deciding to reduce those services from 55 hours per week to 40 hours per week.

In appealing the reduction to her services, Petitioner has the burden of providing by a preponderance of the evidence that Respondent erred. Moreover, the undersigned ALJ is limited to reviewing Respondent's decision in light of the information it had at the time the decision was made.

Given the record and available information in this case, Petitioner has met her burden of proof, and Respondent's decision must therefore be reversed.

It is undisputed that Petitioner has been approved for 55 hours per week of home care services since September 11, 2023, and, while the fact that Petitioner has been authorized for that amount is not dispositive, it heavily weighs in favor of Petitioner's argument given the circumstances of this case.

For example, the record reflects, through both testimony and multiple assessments conducted by Respondent, that Petitioner has not improved or undergone any specific changes in her circumstances that would warrant a reduction in hours. If anything, the record reflects that Petitioner's conditions have only gotten worse.

Similarly, while Respondent argues that Petitioner could attend Respondent's center more frequently during the week, which would decrease the need for home care services, that argument is unpersuasive. It was specifically determined in the past that going to the center for more than one day a week was detrimental to Petitioner given her anxiety, and there is no evidence of any change that would suggest that more frequent attendance would be beneficial, or even feasible.

Respondent does argue that, as provided in the initial approval, the approved 55 hours per week were only authorized on a temporary basis for 60 days. However, that argument is not persuasive given that Petitioner continued to be approved for 55 hours per week of home care services long past the date those 60 days expired. Specifically, she was approved for that amount for over a year and following multiple assessments completed by Respondent. Whatever Respondent meant to do initially, its subsequent actions

demonstrate that it continued to find the 55 hours per week of home care services to be medically necessary.

Moreover, while Respondent's testified that 55 hours per week of home care services is more than a typical client would receive and that 40 hours a week is a "maximum", the above policy does not identify any maximum amount of services that a beneficiary in PACE may receive. Respondent has also been able to approve more than 40 hours per week in the past in this very case.

Looking at this specific case, Petitioner's representative credibly testified about Petitioner's continuing needs; the record demonstrates that Petitioner's needs or circumstances have not changed in any meaningful way that would warrant a reduction in services; and Respondent has not identified persuasive grounds for its decision. Accordingly, Petitioner has met her burden of proof and Respondent's decision to reduce her home care services must be reversed.

### *DECISION AND ORDER*

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

**IT IS, THEREFORE, ORDERED** that:

Respondent's decision is **REVERSED**.