

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2176029
Decision Date:	10/13/2021	Hearing Date:	09/30/2021
Hearing Officer:	Paul C. Moore		

Appellant Representatives:




PACE Representatives:

Carla Recinos-Guzman, Supervisor of Participant Services; Mary Beth Dempsey, Nurse Practitioner; Jessica DeGuglielmo, Physical Therapist; and Jodi Gibeley, Symptom Manager (all from Element Care, and all by telephone)



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Program of All-Inclusive Care for the Elderly (PACE); Durable Medical Equipment
Decision Date:	10/13/2021	Hearing Date:	09/30/2021
PACE Reps.:	Ms. Recinos-Guzman et al.	Appellant Reps.:	
Hearing Location:	Remote		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

On July 23, 2021, Element Care, MassHealth's agent for participants in the Program of All-Inclusive Care for the Elderly (PACE), informed the appellant that it had processed her internal appeal, and determined that it would uphold the denial of her request for a power wheelchair (Ex. 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on August 5, 2021 (130 CMR 610.015(B); Ex. 2). A PACE organization's decision to limit or deny requested services is grounds for appeal to BOH (130 CMR 610.032(B)).¹

¹ Pursuant to 130 CMR 519.007(C)(1), the PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community.

(a) A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.

(b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).

(c) Persons enrolled in PACE have services delivered through managed care

(i) in day-health centers;

(ii) at home; and

(iii) in specialty or inpatient settings, if needed.

Action Taken by Element Care

Element Care denied the appellant's internal appeal of a request for a power wheelchair.

Issue

Did Element Care correctly deny the appellant's internal appeal of a request for a power wheelchair?

Summary of Evidence

Element Care was represented at hearing by its supervisor of participant services, a nurse practitioner, a physical therapist, and a symptom manager, all of whom testified by telephone. The appellant testified on her own behalf by telephone, with the assistance of a social worker from her assisted living facility.

Element Care's supervisor of participant services testified that the appellant is over age 65, is eligible for Medicaid and Medicare, and is enrolled in Element Care, a PACE provider. She testified that on June 30, 2021, the appellant filed a written request for a power, or electric, wheelchair ("the wheelchair" or "power wheelchair") with Element Care. In response, Element Care's interdisciplinary team ("IDT") decided that the appellant should be assessed by the organization's nurse practitioner and physical therapist in order to determine whether there was a medical necessity for the wheelchair. Such an assessment occurred on June 30, 2021. Following this assessment, on July 2, 2021, Element Care sent a written notice to the appellant, stating as follows:

. . . [the IDT] feels a power wheelchair is not found to be medically necessary given [the appellant's] ability to mobilize independently throughout her home setting as well as short community distances with her rollator and also her ability to self-propel her manual wheelchair.

(Ex. 4, p. 2)

The July 2, 2021 notice apprised the appellant of her right to file an appeal of this denial within thirty days (*Id.*).

The appellant notified Element Care that she wished to file an internal appeal. As a result, an Element Care Independent Review Board met to reconsider the request, with a different physical therapist and nurse practitioner. After review, on July 23, 2021, the Independent Review Board concluded that the appellant's internal appeal should be denied, as medical necessity for the wheelchair had not been established (Testimony).

On July 23, 2021, Element Care sent another denial letter to the appellant, stating in relevant part as

follows:

The [Independent Review Board] decided to uphold the team's initial denial to deny the power wheelchair for the following reasons: you were found to have the ability to mobilize independently throughout your home as well as short distances up to 900 ft. without resting with your rollator and you are able to self-propel your manual wheelchair. Therefore the [Independent Review Board] believes it is not medically necessary at this time.

(Ex. 1)

It is this July 23, 2021 denial letter that the appellant timely appealed externally to the BOH (Ex. 2).

Element Care's physical therapist testified that when she performed an in-person assessment of the appellant, the appellant was able to ambulate 900 feet, both indoors and outdoors, with her rollator. According to the physical therapist, the appellant was also able to transfer to and from bed, to and from the toilet, and to and from her lift recliner independently using her rollator, and to ambulate from her apartment at her assisted living facility to the facility's dining room, and back (Testimony, Ex. 4, p. 5). In addition, the appellant exhibited an ability to propel her manual wheelchair up to fifty feet at Element Care's facility. The physical therapist testified that the appellant informed the physical therapist that she requested the power wheelchair to use in the community during visits with her family (*Id.*).

Element Care's nurse practitioner testified that the organization uses a form containing eight medical criteria a participant must meet in order to qualify for a power wheelchair, noting that these criteria are used by Medicare.² The nurse practitioner stated that the appellant met three of the eight medical criteria, but did not meet the other five (Testimony).³

According to the appellant's partial medical record, which was entered into evidence as Exhibit 5, her medical diagnoses include, but are not limited to: osteoporosis; history of bilateral knee replacement; osteoarthritis of the spine at multiple levels; major depressive disorder; atherosclerosis of the coronary artery with stable angina pectoris; status-post cervical spinal fusion; cerebral atrophy; enlarged pulmonary artery; thoracic aortic ectasia; cervical myelopathy with cervical radiculopathy; right lumbosacral radiculopathy; severe obstructive sleep apnea; stage three chronic

² No evidence was presented regarding the particular features of the requested power wheelchair.

³ The three criteria that the appellant met were the following: (1) demonstrates adequate coordination, vision and hearing to use wheelchair safely; (2) lives in a power-wheelchair accessible home environment/building with elevator access, and would be able to secure device safely inside home environment; and (3) does not have a history of drug or alcohol abuse that would cause impaired cognition and safety. The five criteria not met by the appellant were the following: (1) has the judgment and cognitive capacity to transfer on and off a power chair safely as well as to operate wheelchair safely; (2) does not have any medical conditions within the last twelve months that would impact safe use of the wheelchair; (3) does not have a mobility limitation that limits household ambulation and significantly impairs their ability to complete mobility-related activities of daily living; (4) has not expressed an unwillingness to use the wheelchair in the home environment; and (5) user's functional mobility will not decline as a result of using the power chair (Ex. 4, pp. 7-8).

kidney disease; panic disorder without agoraphobia; type two diabetes; gastroesophageal reflux disease (GERD) with hiatal hernia; mixed restrictive and obstructive lung disease; and osteoarthritis of multiple joints (Ex. 5, pp. 6-8).⁴

The appellant's social worker testified by telephone that the appellant believes that her quality of life will be greatly improved by having a power wheelchair when she goes out with family. Some of the appellant's family members have young children, and consequently cannot push her manual wheelchair when they go out because they are carrying the young children. The family goes to settings such as beaches, malls and parks. The appellant testified she underwent back surgery in [REDACTED] Element Care's nurse practitioner testified that the appellant's surgery was a revision of a previous laminectomy and discectomy.⁵ On the day of the hearing, the appellant had had an appointment with her neurosurgeon, Dr. Miller, who recommended spinal cord stimulation, according to the nurse practitioner. However, there were no progress notes available from that appointment as of yet, according to the nurse practitioner (Testimony).

The appellant testified that following her back surgery, she went to a rehabilitation facility. Element Care's physical therapist testified that the appellant did well at the facility, and returned to her assisted living facility within a few weeks, where she has been actively participating in physical therapy twice a week (Testimony).

The appellant testified that she has been walking the hallways at her facility, but has to stop frequently due to her pain. She has also walked around the entire outside of the facility with her physical therapist. She testified that she can self-propel her manual wheelchair, but not as far as she would like. She becomes winded when she ambulates from a vehicle into a store (Testimony).

According to the facility's social worker, due to Covid-19, time-limited indoor visits are allowed at the facility. Visitors are advised to wear masks and keep six feet of distance between themselves and residents. The appellant's apartment at her facility is on the 7th floor, and she ambulates to the dining room and to activities on the first floor there using her rollator, via an elevator (Testimony).

The appellant can use her rollator outdoors, but only for limited distances. Her family members live in the central and western part of Massachusetts, in hilly areas. The social worker testified that the appellant cannot keep up with her family when they are outdoors (Testimony).

Element Care's physical therapist testified that the appellant often needs encouragement to function at her highest potential. She stated that she is concerned that if the wheelchair were approved by Element Care, the appellant would begin to rely on it unduly, and would experience a decline in her functional status. She noted that some of the secondary effects of lack of ambulation include skin breakdown, decreased pulmonary status, decreased range-of-motion in the lower extremities, edema, decreased core control, and decreased bowel and bladder function. She noted that when the

⁴ The list of the appellant's medical diagnoses also includes "dependence on supplemental oxygen." Next to this diagnosis, a note in the margin states, "psychological" (Ex. 4, p. 10).

⁵ See also, Ex. 5, p. 9 (medical progress notes).

appellant has ambulated via her rollator, her oxygen saturation levels have been monitored intermittently, and have not dropped below 92%. She is prescribed two inhalers, one scheduled and one as-needed (Testimony).

According to a written report by Element Care's physical therapist, when the physical therapist expressed to the appellant that use of a power wheelchair could lead to a physical decline, the appellant told her, "I promise not to use it in my apartment or in the building. I will only use it when I go out with my family" (Ex. 4, p. 5).

Element Care's supervisor of participant services testified that the cost of the requested wheelchair is not a rationale for denying the appellant's request.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is over age 65, is eligible for both Medicare and Medicaid, and is enrolled in PACE, administered in Massachusetts as Element Care (Testimony, Exs. 4 & 5).
2. The appellant has diagnoses including, but not limited to: osteoporosis; history of bilateral knee replacement; osteoarthritis of the spine at multiple levels; major depressive disorder; atherosclerosis of the coronary artery with stable angina pectoris; status-post cervical spinal fusion; cerebral atrophy; enlarged pulmonary artery; thoracic aortic ectasia; cervical myelopathy with cervical radiculopathy; right lumbosacral radiculopathy; severe obstructive sleep apnea; stage three chronic kidney disease; panic disorder without agoraphobia; type two diabetes; GERD with hiatal hernia; mixed restrictive and obstructive lung disease; and osteoarthritis of multiple joints (Ex. 5, pp. 6-8).
3. The appellant is a resident of an assisted living facility in the community (Testimony).
4. On June 30, 2021, the appellant filed a written request for a power, or electric, wheelchair with Element Care (Testimony).
5. In response to this request, Element Care's IDT decided that a nurse practitioner and physical therapist should assess the appellant in order to determine whether there was a medical necessity for the wheelchair (Testimony).
6. Such an assessment occurred on June 30, 2021 (Testimony, Ex. 4, p. 2).
7. Following this assessment, on July 2, 2021, Element Care sent a written notice to the appellant, stating as follows: ". . . [the IDT] feels a power wheelchair is not found to be medically necessary given [the appellant's] ability to mobilize independently throughout her home setting as well as short community distances with her rollator and also her ability to self-propel her manual wheelchair" (Ex. 4, p. 2).

8. In response to this denial letter, the appellant requested an appeal of the decision with Element Care (Testimony).
9. Following the request for an appeal, an Element Care Independent Review Board met to reconsider the request, including a different physical therapist and nurse practitioner (Testimony).
10. After review, on July 23, 2021, the Independent Review Board concluded that the appellant's internal appeal should be denied, as medical necessity for the wheelchair had not been established (Testimony).
11. On July 23, 2021, Element Care sent another denial letter to the appellant, stating in relevant part as follows: "The [Independent Review Board] decided to uphold the team's initial denial to deny the power wheelchair for the following reasons: you were found to have the ability to mobilize independently throughout your home as well as short distances up to 900 ft. without resting with your rollator and you are able to self-propel your manual wheelchair. Therefore the [Independent Review Board] believes it is not medically necessary at this time" (Ex. 1).
12. The appellant filed a timely external appeal of this denial with the BOH (Ex. 2).
13. Element Care uses a form containing eight medical criteria a participant must meet in order to qualify for a power wheelchair, and these criteria are also used by Medicare (Testimony).
14. The appellant met three of the eight medical criteria, but did not meet the other five (Testimony, Ex. 4, pp. 7-8).
15. When Element Care's physical therapist performed an in-person assessment of the appellant, the appellant was able to ambulate 900 feet, both indoors and outdoors, with her rollator (Testimony, Ex. 4, p. 5).
16. Per the physical therapist evaluation, the appellant was also able to transfer to and from bed, to and from the toilet, and to and from her lift recliner independently using her rollator, and to ambulate from her apartment at her assisted living facility to the facility's dining room, and back (*Id.*).
17. The appellant also uses a manual wheelchair (Testimony).
18. The appellant exhibited an ability to propel her manual wheelchair up to fifty feet at Element Care's facility (Testimony).
19. In [REDACTED] the appellant underwent a surgical revision of a previous laminectomy and discectomy (Testimony, Ex. 5).
20. Following her back surgery, the appellant was briefly admitted to a rehabilitation facility

(Testimony).

21. After completing her stay at the rehabilitation facility, the appellant returned to her assisted living facility, where she has been receiving physical therapy twice a week (Testimony).
22. The appellant reports pain and having to rest frequently during her physical therapy (Testimony).
23. The appellant believes that her quality of life will be greatly improved by having a power wheelchair when she goes out with family (Testimony).
24. Some of her family members have young children who need to be carried, making it difficult for those family members to push her manual wheelchair (Testimony).
25. Some of the settings the appellant visits with her family include beaches, parks, and malls (Testimony).
26. Most of the appellant's family members live in central or western Massachusetts, in hilly areas (Testimony).
27. The appellant can self-propel her manual wheelchair, but not as far as she would like (Testimony).
28. The appellant reports becoming winded when she ambulates from a vehicle into a store (Testimony).
29. Element Care asserted that the appellant needs encouragement to function at her highest physical potential (Testimony).
30. Some of the secondary effects of lack of ambulation include skin breakdown, decreased pulmonary status, decreased range-of-motion in the lower extremities, edema, decreased core control, and decreased bowel and bladder function (Testimony).

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 519.007(C), "Individuals Who Would be Institutionalized," read as follows:

(C) Program of All-Inclusive Care for the Elderly (PACE).

(1) Overview. The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community.

- (a) A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.
- (b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).
- (c) Persons enrolled in PACE have services delivered through managed care
 - (i) in day-health centers;
 - (ii) at home; and
 - (iii) in specialty or inpatient settings, if needed.
- (2) Eligibility Requirements. In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must meet all of the following criteria:
 - (a) be 55 years of age or older;
 - (b) meet Title XVI disability standards if 55 through 64 years of age;
 - (c) be certified by the MassHealth agency or its agent to be in need of nursing-facility services;
 - (d) live in a designated service area;
 - (e) have medical services provided in a specified community-based PACE program;
 - (f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: *Asset Reduction*; and
 - (g) have a countable-income amount less than or equal to 300 percent of the federal benefit rate (FBR) for an individual.
- (3) Income Standards Not Met. Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*.

Element Care administers PACE on behalf of MassHealth, and is MassHealth's agent. As such, Element Care is bound to follow MassHealth laws and regulations, as well as federal laws and regulations governing PACE.

Pursuant to 130 CMR 450.204, the MassHealth All Provider Manuals, MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

- (A) A service is "medically necessary" if:**
 - (1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and**

(2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (*See* 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

(Emphasis added)

Next, pursuant to federal regulations applicable to state-operated PACE programs, 42 Code of Federal Regulations § 460.92 enumerates “Required Services,” as follows:

(a) The PACE benefit package for all participants, regardless of the source of payment, must include the following:

(1) All Medicare-covered services.

(2) All Medicaid-covered services, as specified in the State's approved Medicaid plan.

(3) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(b) Decisions by the interdisciplinary team to provide or deny services under paragraph (a) of this section must be based on an evaluation of the participant that takes into account:

(1) The participant's current medical, physical, emotional, and social needs; and

(2) Current clinical practice guidelines and professional standards of care applicable to the particular service.

(Emphasis added)

The state Medicaid program (known in Massachusetts as MassHealth) does cover the cost of durable medical equipment, such as power wheelchairs, subject to a medical necessity requirement. *See, e.g.,* 130 CMR 409.413(B)(2) of the Durable Medical Equipment regulations, which includes “ambulatory equipment” as a covered service.

The appellant requested a power wheelchair for use in the community when visiting family members. There is no dispute that she already has a manual wheelchair that she can self-propel up to 50 feet indoors. In addition, the appellant is able to use her rollator to ambulate up to 900 feet, both indoors and outdoors. The appellant's ability to propel her manual wheelchair outdoors for long distances, in settings such as beaches, hills, and parks, is more limited.

MassHealth's agent, Element Care, expressed concern that the appellant needs encouragement to function at her highest physical potential, and that she could become unduly reliant on a power wheelchair. Element Care's physical therapist indicated that with a loss of independent ambulation, an array of secondary effects can follow, such as skin breakdown, decreased pulmonary status, decreased range-of-motion in the lower extremities, edema, decreased core control, and decreased bowel and bladder function.

The hearing officer shares these concerns. Pursuant to the federal PACE regulations cited above, the PACE benefit package must include all Medicaid-covered services, as well as other services determined necessary by the IDT to *improve and maintain* the participant's overall health status. The IDT has determined that the appellant's use of a power wheelchair, while convenient for the appellant, may actually not promote the appellant's overall health status, for the reasons stated.

In addition, under the MassHealth medical necessity regulations at 130 CMR 450.204(A)(2), in order for a power wheelchair to be considered medically necessary, there must be no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to MassHealth. While cost is not at issue in this case, there are existing, more conservative pieces of medical equipment – a rollator and manual wheelchair – that are comparable in effect, available and suitable for the appellant to assist her in her ambulation.

Should the appellant's health status or ability to ambulate independently decline, she may, at any time, submit a new request for a power wheelchair to Element Care, along with supporting medical documentation. Element Care is required to make a new decision on any such request, with further appeal rights for the appellant.

Element Care did not err in denying the appellant's internal appeal of a denial of her request for a power wheelchair.

For the reasons stated, the appeal must be DENIED.

Order for Element Care

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Paul C. Moore
Hearing Officer
Board of Hearings

cc:

[REDACTED]