Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2178387
Decision Date:	01//21/2022	**Hearing Date:**	12/14/2021
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

[redacted]

Appearance for Fallon Health:
Jennifer Maynard, RN, Site Director, Summit ElderCare
Michelle Malkoski, Director of Quality & Risk, Summit ElderCare
Dr. Robert Schreiber, VP & Medical Director, Summit ElderCare
John Shea, Esq., Attorney for Fallon Health

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:	Approved	**Issue:**	Program for All Inclusive Care for the Elderly (PACE)
Decision Date:	01/21/2022	**Hearing Date:**	12/14/2021
PACE's Rep.:	John Shea, Esq., et al.	**Appellant's Rep.:**	[redacted]
Hearing Location:	Quincy Harbor South	**Aid Pending:**	No

Authority

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

Jurisdiction

Through a notice dated October 22, 2021, Fallon Health, a MassHealth Program for All-Inclusive Care for the Elderly (PACE), notified the appellant that it denied coverage for long-term care placement (Exhibit 1). The appellant filed this appeal in a timely manner on October 28, 2021 (see 130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by Fallon Health

The MassHealth PACE contractor, Fallon Health, denied the appellant's request for long-term placement.

Issue

The appeal issue is whether Fallon Health was correct in denying the appellant's request for authorization of long-term care placement.

Summary of Evidence

The attorney for Fallon Health appeared at hearing via telephone with the site director (a registered nurse), doctor, and director of quality and risk from the staff of Summit ElderCare, a division of Fallon Health that administers the Program for All-Inclusive Care for the Elderly (PACE) for Fallon Health.[1] The attorney stated that, pursuant to the governing regulation at 42 CFR § 460.4, PACE provides comprehensive health care services designed to (i) enhance the quality of life and autonomy for frail, older adults; (ii) maximize dignity of, and respect for, older adults; (iii) enable frail, older adults to live in the community as long as medically and socially feasible; and (iv) preserve and support the older adult's family unit. Members of PACE are eligible for MassHealth Standard and meet the criteria for long-term care placement. The appellant has been a member of PACE since 2017.

At hearing, Fallon Health's attorney referred to a letter dated August 25, 2021 that informed the appellant that the interdisciplinary team (IDT) determined that the appellant does not require long-term care because "safe community living options have not been exhausted (assisted living, supportive housing, adult foster care), increased attendance has not been exhausted, and intermittent respite stays to better support her caregiver have not been tried. Additionally, the team feels [the appellant] and her caregiver may be better supported in the Assisted Living where they were both slated to move prior to this recent hospitalization." The appellant internally appealed that decision, prompting the October 22, 2021 denial from Fallon Health that is now under appeal. The October 22, 2021 denial stated that "possible care plan options were offered by Summit ElderCare" and the appellant's spouse was moved to an assisted living facility that does not have a special needs unit that could meet the appellant's needs due to her dementia. The denial went on to state that "[t]here is no documentation that indicates [the appellant] has been screened for other levels of community care such as an assisted living facility with a dementia unit, Lutheran Home supportive housing or adult foster care." The denial also suggested that other supports could be explored including adult day health care for both the appellant and her spouse; whether the appellant's spouse's needs could be met in an assisted living facility with a memory/special needs unit; or whether the spouse's transportation needs could be met from his current assisted living facility.

Documentation showed that the appellant is over the age of 65 and has diagnoses of depression, Alzheimer's, hypertensive heart and kidney disease, urinary incontinence, sleep apnea, repeated urinary tract infections, and syncope. The appellant has a history of syncopal episodes which have resulted in multiple hospitalizations. The appellant's spouse was her primary caregiver as their only child lives in South Carolina. The spouse also has Alzheimer's/dementia and a history of anxiety, depression, and alcohol use, but is sober for two years now. The appellant's most recent syncopal episode followed her attempt to elope from the home on August 11, 2021. After that event, her spouse stated that he could no longer manage the stress related to her care.

[1] A review of the Interdisciplinary Team (IDT) meeting attendance sheet reflects the attendance of one of the individuals present at that meeting as present at the hearing (the site director who is a registered nurse). None of the other individuals present at the hearing appeared to participate in the IDT meeting.

Fallon Health's attorney reviewed the Summit ElderCare long-term care assessment tool (hereinafter, the "Tool") which aims to "answer the questions 'what would it take to keep this participant living in the community' and 'is this plan feasible?'" All members of the IDT are required to sign off on the completed tool. The attorney stated that pursuant to 42 CFR § 460.96, any service that is not authorized by the IDT team, even if it is a required service, is excluded from coverage under PACE, unless it is an emergency service. He explained that the IDT is in charge of creating a plan of care and determining what services are appropriate and excluded or included.

The Tool for the appellant showed that the following alternatives were considered: rest home, assisted living facility, additional home care, respite, additional PACE days, and supportive housing. Barriers to the appellant's care included the following: the appellant's husband's treatment of home health aides (HHA); loss of primary caregiver (the appellant's spouse) who is unable to provide 24/7 care due to his own limitations; cost of assisted living facility for memory care; multiple syncope episodes and urinary tract infections requiring hospitalizations; physical and occupational therapy needs; and refusal of spouse to consider any placements for the appellant outside of their town due to his desire to visit the appellant. Solutions discussed included private pay of HHA; increased home care; adult foster care and supportive housing; increased PACE center attendance; assisted living facility; memory care; private care; assisted living facility with memory care unit; supportive housing at Lutheran. In the solutions section, the Tool also noted that the appellant "cannot be alone due to Alzheimer's disease and elopements in the past. She will need a caregiver."

According to the Tool, the IDT's final decision was to deny long-term care based on the following rationale and factors: the appellant and her family have not explored other community options; her spouse moved to an assisted living facility and the appellant might have been able to stay in the community with supports; family reluctance to explore other geographic areas; and additional days of attendance and intermittent respite for caregiver stress.

The appellant's son and daughter-in-law testified that they have exhausted all feasible community options. The appellant was denied admission to the assisted living facility where her spouse moved because the facility determined it could not provide the level of care she required. The assisted living facility conducted an assessment and stated that due to the appellant's level of dementia, she lacks the ability to identify and communicate her needs for herself and is an elopement risk. She is incontinent of bowel and bladder, has nebulizer treatments, and requires thickened liquids. The assisted living facility does not have a special care unit and determined the appellant would not be safe in its community. The appellant's son stated that intermittent respite stays are no longer an option because the appellant and her spouse do not have a home to reside in between respite stays because they gave up their apartment in the community once the spouse moved to the assisted living facility.

The appellant's son explained that the appellant and her spouse have been married for 56 years and lived their entire lives in the same town. To them, living in the community means the town in which they have spent their entire lives. There are no feasible supportive housing or adult foster care options available in the *local* community. The assisted living facility does not provide

transportation services for residents, and it is important to the spouse to be able to have the appellant live locally so he can visit her. The Lutheran supportive housing mentioned by Summit is over 20 minutes away by car. The appellant's spouse is over [redacted] years old, has dementia, vision and neuropathy conditions, and gets easily confused in unfamiliar places. When he went to tour the place, the drive was mentally and physically draining for him. The current long-term care facility where the appellant was admitted to from the hospital for respite care is in their hometown, enabling the spouse to visit her. He no longer drives and relies on the elder bus and local ride services to bring him the 2.5 miles there. It would be detrimental to both the appellant and her spouse if they were not able to see each other regularly. The long-term care facility determined that the appellant met the criteria for long-term care. It noted that she fluctuates from limited assist to dependent with personal hygiene and is an extensive assist with toileting and transfers.

The appellant's son stated that Summit recommended the assisted living facility where the spouse is at for the appellant as well, but she was denied admission due to her needs. He also testified that an assisted living facility with a dementia or special care unit is not financially feasible for the appellant. Another suggestion of Summit was additional attendance at adult day health, but that is what Summit PACE is, she has been enrolled in it since 2017, and while in the community over the past year, she has had multiple health and elopement episodes endangering her safety.

The appellant's son testified that Summit's annual assessment of the appellant stated that "her dementia continues with an expected decline and she is not left alone even for short periods." He stated that over the past year, the appellant has had at least ten syncopal episodes and multiple emergency room visits and hospitalizations. Since her admission to the long-term care facility in [redacted], there have been no syncopal episodes, no urinary tract infections, no elopements, and the appellant has been safe. He testified that it is not medically, socially, or financially feasible or safe to keep the appellant in the community at this time.

One of the representatives from Summit responded that everyone in PACE meets long-term care requirements; however, as the goal of PACE is to enable frail, older adults to live in the community as long as medically and socially feasible, PACE takes a stepped approached to services. PACE trials community services before approving long-term care. First, they try one level of service, and if that does not work, they move onto the next step. Here, the appellant went from her private home to the hospital due to a syncopal episode and then to the nursing facility for respite because her spouse was in the assisted living facility. She stated that the appellant needs help with activities of daily living (ADLs), but she does not require any skilled nursing services. She testified that an assisted living facility or group adult foster care were options that were never considered for the appellant because the appellant's family did not allow discharge planning from the long-term care facility. Summit felt that an assist living facility other than where the spouse was could service the appellant along with other community services. But the family would not consider other assisted living facilities and declined referrals to adult foster care. She explained that if the appellant were in the community, Summit could arrange for the appellant and her spouse to see each other at the adult day health center. She also stated that it's possible to disenroll from PACE and complete the traditional MassHealth long-term care

application, as she did not see other barriers to long-term care for the appellant.

The appellant's son responded that he disagrees with Summit's comment that he did not allow other referrals. He felt that some of the options presented were not feasible. Apartments and rest homes were not feasible for her given that she cannot be left alone. The option of adult foster care was not well-explained to them by Summit. But they were told it can be a long process, it was backlogged, and the wait could be about six months. Additionally, they did not know where the adult foster care would be, and they do want something near the appellant's hometown and her spouse. He argued that community is where someone lives and is from, not somewhere far from their home. Again, an assisted living without a special care or dementia unit is not feasible as the appellant's needs are too great and it would not be safe. She was already denied admission to the assisted living facility where her spouse is at, which was one of Summit's original suggestions. An assisted living with a special care or dementia unit is not financially feasible for the appellant.

The appellant's son explained that the appellant needs someone to administer all her medications. They have tried many different medication reminder systems and they have all failed. She has been declining since the IDT Long-Term Care Assessment Tool was completed in August 2021, over four months ago. Her swallowing is worse, her mobility has decreased, she is unsteady walking, and all her medications need to be crushed. The long-term care facility has stated that it is no longer safe for the spouse to assist the appellant with transfers or walking. It is upsetting to the son that the appellant would need to be removed from a safe situation (where there have been no incidences since August 2021) and fail at every step before being able to qualify for long-term care under PACE, which she has been a part of since 2017. Every individual situation is different and he knows and understands the appellant's needs. Additionally, he noted that the Tool indicates that the alternatives of rest home, assisted living facility, additional home care, respite, additional PACE days, and supportive housing were all marked down has having been considered.

The Summit representative responded that those alternatives were checked off as being considered as potential solutions by the IDT, not eliminated as options. Additionally, Summit has not been able to move forward with referrals for adult foster care because it cannot start the application process without the appellant and family's approval and the appellant's family wanted her and her spouse close. She noted that when making a referral to a group adult foster care, Summit cannot require someone to go out of its service area. She explained that the caregiver at the adult foster care can administer the appellant's medications and the appellant and her spouse could see each other at the adult day health center. Summit's doctor stated that they look at options which meet the mission of PACE to keep members in the community. The IDT felt that there were community living options and services that would allow the appellant and her spouse the dignity of a community setting and ability to still see each other.

The Summit representative explained that the group adult foster care process varies. They could find a match right away or it could be several months. It is similar to foster care for children where providers are willing to care for adults or those with disabilities in individual homes. She argued that the appellant did very well at the day health program and thrived in the community.

It is important to problem solve community living options before moving to a nursing facility. She stated that one reason to avoid nursing facilities is the loss of ADL functions and a decline in happiness. The appellant's need for pre-thickened liquids and crushing medications is not a barrier to making a referral to a group adult foster care. She stated that the family determined these options were not appropriate without actually trying them, limiting Summit's ability to work within PACE's goals of keeping elder adults in the community.

Findings of Fact

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

1. The appellant is a member of Program for All-Inclusive Care for the Elderly (PACE) (Testimony and Exhibit 4).

2. In [redacted] the appellant was admitted into a long-term care facility for respite care after a hospitalization (Testimony and Exhibits 4 and 5).

3. The appellant has diagnoses of depression, Alzheimer's, hypertensive heart and kidney disease, urinary incontinence, sleep apnea, repeated urinary tract infections, and syncope. The appellant has a history of elopement and syncopal episodes, which have resulted in multiple hospitalizations (Testimony and Exhibit 4).

4. The appellant's spouse was her primary caregiver as their only child lives in South Carolina. The spouse also has Alzheimer's/dementia and a history of anxiety, depression, and alcohol use, but is sober for two years now. The spouse is no longer able to manage the appellant's care due to his own limitations and the stress involved (Testimony and Exhibits 4 and 5).

5. The appellant's spouse moved into an assisted living facility and gave up their apartment in the community (Testimony and Exhibit 5).

6. The spouse's assisted living facility evaluated the appellant and determined it could not provide the level of care she required and she would not be safe in their facility (Testimony and Exhibit 5).

7. The appellant's spouse and family members requested long-term care placement for the appellant (Testimony and Exhibits 4 and 5).

8. On August 25, 2021 Fallon informed the appellant that the IDT team determined that the appellant does not require long-term care because "safe community living options have not been exhausted (assisted living, supportive housing, adult foster care), increased attendance has not been exhausted, and intermittent respite stays to better support her caregiver have not been tried. Additionally, the team feels [the appellant] and her caregiver may be better supported in the Assisted Living where they were both slated to move prior to this recent hospitalization." (Testimony and Exhibit 4).

9. The appellant appealed the denial internally and on October 22, 2021, Fallon informed her that the appeal was denied because other possible care plan options were offered and there was no documentation that the appellant had been screened for other levels of community care such as an assisted living facility with a dementia unit, Lutheran Home supportive housing, or adult foster care, along with other supports such as adult day health care for both the appellant and her spouse. (Testimony and Exhibit 4).

10. The appellant cannot be left alone even for short periods and requires assistance with her ADLs, including mobility, transfers, toileting, and hygiene (Testimony and Exhibit 4).

11. The appellant has no alternative caregivers in the community (Testimony and Exhibit 5).

12. An assisted living facility with a special care or dementia unit is not financially feasible for the appellant (Testimony and Exhibit 5).

13. The appellant's dementia continues to decline (Testimony and Exhibits 4 and 5).

14. Since the appellant's admission to the long-term care facility on a respite basis, there have been no syncopal episodes, no urinary tract infections, and no elopements (Testimony and Exhibits 5).

Analysis and Conclusions of Law

The appellant is a member of PACE (Programs for All-Inclusive Care for the Elderly). PACE 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. (130 CMR 519.007(C)). Members of the PACE program are eligible for MassHealth Standard. (130 CMR 519.007). MassHealth administers the program as the Elder Service Plan. (130 CMR 519.007(C)). As a member of PACE, the appellant is certified eligible for nursing-facility services. (130 CMR 519.007(C)(1)(2)). Individuals are determined medically eligible for nursing-facility services by MassHealth or MassHealth's agent as a condition for payment, in accordance with 130 CMR 456.000. (130 CMR 519.006(A)(2)).

A PACE organization must "[e]stablish an interdisciplinary team at each Pace [*sic*] center to comprehensively assess and meet the individual needs of each participant." (42 CFR § 460.102(a)(1)). Generally, a PACE participant is entitled to all of the Medicare- and Medicaid-covered items and services that they would receive if not enrolled in the PACE plan. (42 CFR § 460.92). However, the IDT is given broad latitude to assess a participant's needs for particular services. See 42 CFR §§ 460.102-460.106. They also have the authority to determine excluded services pursuant to 42 CFR § 460.96:

The following services are excluded from coverage under PACE:

(a) **Any service that is not authorized by the interdisciplinary team**, **even if it is a required service**, unless it is an emergency service.

42 CFR § 460.96.

MassHealth's regulations do not provide additional guidance regarding how an IDT is to review a participant's request for services or how an IDT's decision should be reviewed. See 130 CMR 519.007(C).[2]

Counsel for Fallon argued that the regulations governing the PACE program at 42 CFR 460.96 exclude coverage for any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service. Counsel noted that the regulations uphold the decision to deny authorization for long-term care services. Essentially, the regulations would not allow an individual to contest a decision made by an IDT.

The regulations at 42 CFR 460.106(a) require an IDT to promptly develop a comprehensive plan of care for each participant. The plan of care must meet the following requirements:

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[2] The entirety of the MassHealth regulatory guidance on PACE is as follows:

(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*.

130 CMR 519.007(C).

(1) Specify the care needed to meet the participant's medical, physical, emotional, and social needs, as identified in the initial comprehensive assessment.
(2) Identify measurable outcomes to be achieved. (42 CFR 460.106(b)).

The regulations require the IDT to reevaluate the plan of care, including defined outcomes, and make changes as necessary. (42 CFR 460.106(d)). The regulations also require the IDT to **reevaluate the plan of care in collaboration with the participant or caregiver, or both, to ensure that there is agreement with the plan of care and that the participants concerns are addressed**. (42 CFR 460.106(e)) (emphasis added). The IDT in this case did not clearly address the concerns of the appellant or her spouse and family, who do not want the appellant to return to the community. The appellant's family made clear in testimony that they do not agree with the IDT's plan to discharge the appellant from the long-term care facility to trial adult foster care or other supportive housing. That plan does not address the medical, social, or emotional needs of the appellant or her spouse.

Based on testimony and the records submitted, the appellant was unsuccessful living in the community with home care and PACE center attendance. She experienced multiple syncopal episodes, urinary tract infections, and emergency room and hospital stays, none of which have occurred since her admission to the long-term care facility. The assisted living facility where her spouse resides determined that it was not a safe setting for the appellant. The IDT has not specified how the proposed plan to discharge the appellant from the nursing facility and trial adult foster care would meet the participant's medical, physical, emotional, and social needs. Fallon did not show what, if any, measurable outcomes the IDT identified to be reached by the plan, other than state that the appellant must trial (and fail) community services before being approved for long-term care services under PACE.

Instead, Fallon relied on one provision of the regulation, essentially making the decision of the IDT binding on any individual. This one provision of the regulations would allow an IDT to make decisions without requiring the IDT to work in collaboration with the participant or caregivers. Summit demonstrated that they were not clearly working within the regulatory requirements of PACE. The reliance on a limited reading of the regulations is not correct. Summit failed to comply with the regulatory requirements of the PACE program.

Additionally, both Summit Healthcare and the appellant presented sufficient evidence to demonstrate that the appellant requires long-term care placement and there are no other medically and socially feasible options in the community. The appellant is on several medications and is dependent on others for completing most activities of daily living. The appellant cannot be left alone due to her dementia and risk of elopement. As a member of PACE, it has already been determined that the appellant is eligible for nursing-facility services. (130 CMR 519.006; 130 CMR 519.007(C); 130 CMR 456.000). The appellant is in need of long-term care. Prior to her admission to the long-term care facility (on a respite basis), the appellant had experienced at least ten syncopal episodes and required numerous emergency room visits and hospitalizations. The appellant presented sufficient evidence to demonstrate that she cannot return to the community. The decision made by Fallon Health was not correct.

This appeal is approved.

Order for Fallon Health

Determine the appellant eligible for long-term care placement.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Fallon Health, Member Appeals and Grievances, 10 Chestnut Street, Worcester, MA 01608