Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2203015
Decision Date:	8/11/2022	**Hearing Date:**	06/22/2022
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:

[redacted], Appellant
[redacted], Appellant's Son/POA

Appearances for Fallon:

John A. Shea, Esq.
Noah Jones, Member Appeals & Grievances
Sara Ortiz, Member Appeals & Grievances
Michelle Malkoski, Senior Director, Summit ElderCare
Colleen McGuiness, Clinical Site Director, Summit ElderCare

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:**	PACE Eligibility
Decision Date:	8/11/2022	**Hearing Date:**	06/22/2022
Fallon Reps.:	John A. Shea, Esq.	**Appellant Rep.:**	[redacted]
Hearing Location:	Board of Hearings (Remote)	**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

On March 15, 2022, Fallon Health (Fallon) notified the appellant of its decision to involuntarily disenroll her from Summit ElderCare, its Program of All-Inclusive Care for the Elderly (PACE) program (Exhibit 1).[1] The appellant filed a request for hearing on April 19, 2022 (Exhibit 3). On April 27, 2022, the Board of Hearings dismissed the appeal because the appellant did not submit proper authorization from the individual who signed the request for hearing (Exhibit 4). The appellant subsequently provided the proper authorization documents; the Board then vacated the dismissal and scheduled a hearing (Exhibit 5). Involuntary disenrollment from the PACE program is a valid basis for appeal (130 CMR 610.032(A)). At the conclusion of the hearing, the record was held open for the parties to submit further documentation (Exhibit 7).[2]

[1] On March 16, 2022, Fallon denied the appellant's request for coverage of acute rehabilitation level of care (Exhibit 2). The appellant timely appealed this determination too, but withdrew her request on the date of hearing.

[2] Prior to the start of hearing, the appellant's son requested that the hearing be rescheduled to allow him time to fully review Fallon's submissions and/or to obtain counsel. The hearing officer denied the request, but indicated that the record would be held open following the hearing to allow time for the appellant to review and respond to Fallon's submission and to obtain counsel. The appellant subsequently obtained counsel and responded to Fallon's submissions. The hearing officer offered to reconvene the hearing; the appellant declined the offer (Exhibit 12).

Action Taken by Fallon

Fallon determined that it would involuntarily disenroll the appellant from its PACE program.

Issue

The appeal issue is whether Fallon's determination to disenroll the appellant from its PACE program is supported by regulation.

Summary of Evidence

Fallon was represented by an attorney who testified by phone.[3] Fallon's attorney referenced the following chronology: On February 1, 2022, the appellant, a female in her early 90s, was enrolled into Summit ElderCare, Fallon's PACE program. On March 15, 2022, Fallon notified the appellant that she was being involuntarily disenrolled from Summit ElderCare effective May 1, 2022 (Exhibit 6, pp. 6-7). Fallon identified two reasons for the involuntary disenrollment: 1) your behavior jeopardizes your health or safety, or the safety of others; and 2) your caregiver's behavior jeopardizes your health or safety, or the safety of the caregiver or others. On April 19, 2022, the appellant filed an external appeal with the Board of Hearings; on April 25, 2022, she filed an internal appeal of this action (Exhibit 3; Exhibit 6, p. 5). On May 19, 2022, Fallon denied the internal appeal and upheld its initial decision (Exhibit 6, pp. 8-9). In its denial of the internal appeal, Fallon noted the following:

> Your request for coverage of involuntary disenrollment from Summit ElderCare was denied for the following reason(s):
>
> Clinical documentation within the Medical Record shows evidence of your son's . . . refusal to comply with PACE recommendations and his argumentative behavior towards staff.
>
> The communications from your son . . . demonstrate a pattern of hostility, disruptive behavior and resistance to adherence to the plan of care. Both of these are listed in the enrollment agreement as grounds for involuntary disenrollment. Unfortunately both you and your son's behavior have jeopardized your health and safety and the safety of others.

(Exhibit 6, p. 8).

By way of background, Fallon's attorney explained that its PACE program provides comprehensive health care services to frail, older adults living in the community. Fallon's attorney noted that the PACE program is governed by 42 CFR §460 *et seq*. These regulations, as well as the provisions of

[3] Fallon also had numerous other individuals who appeared at hearing (all by phone), including representatives from its PACE program.

the enrollment agreement signed by the appellant's son, make it clear that the PACE program is structured as a "team" approach to maintaining elders in their community. The whole concept of the team involves multiple disciplines, all of whom are required to be part of the interdisciplinary team. Fallon argues that in this case, the appellant's son has made it clear that he does not want his mother to be cared for via this team approach. The son's unwillingness to work with the team has jeopardized the appellant's health, which he argues justifies Fallon's decision to involuntarily disenroll the appellant from the program. Further, because the appellant defers to her son in all matters, her behavior jeopardizes her own health and further supports Fallon's decision to disenroll her from the program (Exhibit 8).

Fallon's attorney summarized the facts and circumstances that led to the issuance of the disenrollment notice. In late February, the appellant had begun to experience worsening hip pain. Over the following few weeks, the appellant was seen several times by PACE providers, including an orthopedic visit where she received a cortisone injection in her hip. Despite treatment, the appellant's pain progressed and on March 10, 2022, the appellant was seen at the PACE program's clinic. Fallon argues that the son's behavior at that clinic visit contributed to Fallon's decision to issue the disenrollment notice. The nurse practitioner's notes from that visit provide, in part, as follows:

> I informed PPt I was informed she's having hip pain and asked PPt what her pain level while sitting in her w/c. PPt states, "I have no pain while sitting but I have pain when I move." After PPt finished giving this information on her pain status, PPt's son asked PPt, "what did I tell you to tell Mary about your pain?" After PPt's son asked PPt this question, PPt proceeded to tell me her pain is 11/10. I said, ok thanks for telling me but I have to get you in bed to examine you. I informed PPt how I was going to get her in bed and every touch of PPt's w/c, movement [sic] was communicated to PPt prior to anything being done. I turned PPt's w/c to an angle [sic] that I can easily transfer her in bed, remove both foot rests without any issues – PPt did not c/o of pain or discomfort, offered her a w/c, and instructed PPt what she needed to do, with her w/c lock, push herself up from her w/c with her arms (pushing off the arm rest of her w/c). PPt initial try could [sic] push herself up from the w/c. I seek [sic] assistance from the primary nurse in the room with me and we both lifted PPt off her w/c to a standing position and PPt pivot [sic] to a sitting position on the edge of the bed. PPt did not yell, scream or call out in pain during the transfer. PPt assisted to put her feet into bed without any issues. Asked PPt how she was doing pain wise while in bed and still denied any pain. While PPt was in bed, I noticed PPt's LLE extremely rotated out and is slightly shorter than the RLE. I asked PPt whether she can move her LLE – PPt was able to move her leg inwardly but the foot reverted back to the external rotation position. PPt wasn't able to flex her knee or her pain [sic]. I proceeded to inform PPt am going to attempt to undress her from the waist down to look at her hip at this point, PPt's son intervened saying, "Mary, am telling you if my mother complains of any pain, I'll ask you to stop whatever you are doing." As I attempt to roll PPt using the draw sheet on the bed from the left side with primary nurse at PPt's right of the bed, PPt started to scream of pain. PPt's son started yelling and screaming at Provider to stop, (by then I have

> already informed PPt I am going to stop rolling her because of the amount of pain she's in) and demanded for PN to call the site director. Primary nurse turned to PPt's son and asked him whether he wanted his mother to be examined or not but he did not respond. All he kept saying is, "get Colleen in here now." PN went out to call Colleen in. Both PN and Colleen came in and I inform both PPt and son based on what I observed during the limited physical examination of PPt, am going to send PPt to ED, SVH for the following reasons, increase [sic] pain and external rotation of PPt's leg. Upon hearing this, PPt started yelling "am not going to the ED and I don't care what you say. The only way I will go is if my son says it's ok." PPt turned her head to her son and said, "Peter do you think I should go." PPt's son started talking out loud, yelling stating how this clinic visit is a waste of time and PPt could have been seen at orthopedics and be treated if only I had given the authorization. PPt's son proceeded to say, "she's not going to SVH, the only hospital she will be going to is Mass General." I informed PPt Summit defers all our PPt's ED visits to SVH and if they can't care for PPt based on the severity of the case, they will transfer PPt to the appropriate hospital. PPt's son adamantly refused, saying, "my mother is not going to any ED except Mass General." At this point, I left the exam room with site director and primary nurse in there hoping that they can convince PPt's son to agree to transfer PPt to SVH ED. Site director came out of room with primary nurse still in room with PPt and son and stated, "PPt's son still refusing SVH ED." I informed site director am not in agreement for PPt to be transferred to Mass General while our local hospitals are capable of caring for PPt. I informed the site director to speak to someone in authority to approve ED at Mass General since am not in favor of the transfer to Mass General. PPt transfer to ED at Mass General around 4 pm.

(Exhibit 6, pp. 64-65).

Fallon argues that the son's decision to have the appellant transferred to MGH jeopardized her health. First, transporting the appellant (who was in acute pain) to a hospital located 50 miles away, when there is a hospital located 2 miles away, was not in her best interest. Second, because MGH does not have a contract with the PACE program, the team did not have access to her records at this non-contracted facility, and thus the team had no way to get information about the appellant's health status. The PACE program enrollment agreement mandates that members must receive all care through the PACE program or its contracted providers; the appellant's son's actions violated the terms of the enrollment agreement and jeopardized the appellant's health.

One of the PACE representatives also added that the appellant's son did not follow MGH's recommendations following the ED visit. Although staff recommended outpatient physical therapy, pain management, and rest to treat a muscle injury, the son pursued an admission to an acute rehabilitation facility. She noted that the son's plan resulted in another appeal with Fallon, which led to the appellant boarding for several days in the emergency department at MGH. She also noted that during this appeal process, the son hung up on PACE representatives on more than one occasion. She argues that these are additional examples of the appellant's son refusing to follow care recommendations and refusing to allow PACE staff to participate in or coordinate

the appellant's care, all of which jeopardized her health.

Following this March 10th clinic visit, the appellant's son sent various emails to the PACE program's site director. Fallon's attorney referenced portions of several of them in support of its argument that the appellant's caregiver will not work with a team.

On March 11, 2022, the son wrote, in part, the following:

> I cannot work with you or your team if you insist having [sic] more than one person on the phone when I communicate with anyone from Summit Elder Care.
> Having multiple persons on the phone creates an adverse and contentious environment. It does nothing but create tension and adversity. It breaks down trust even further.
> I have found that with this group, I am not listened to or heard. I don't feel respected or valued for my wisdom, experience and knowledge in regards to my mom's care.
> I have no desire to work with a 'team.' Sure, assemble a team and have them working for my mom's best interest while taking in to fill account my experience and knowledge of what works and doesn't work for my mom. . . . .
> Moving forward, I expect only three points of contact – first, whoever answers the phone when I call. Second, I only want to speak to the person I asked for, whether it's a nurse, a nurse practitioner, doctor, or yourself. Third, I do not want return calls from any person I haven't requested to speak with. The confusion it creates is too much and unnecessary. I don't want to have to work so hard to develop relationships with so many different people. I want my contacts simplified and direct.

(Exhibit 6, pp. 36-37).

On March 14, 2022, the son wrote, in part, the following:

> I will no longer entertain conversations like what just occurred.
> if you wanted to tell me about the appeal process on Friday, this is how the conversation should have gone….
> hi [redacted] it's [redacted] do you have a minutes to talk? the request for Fair lawn was denied but there is an appeal process and I'd really like to help with that appeal. period.
> no more menusha [sic], no more arguing, clear direct concise information solely about my mother's care.
> all my life I have never dealt with medical people like this.
> please forward my email to the doctor that was on the phone.
> I will no longer have conversations with more than one person.

(Exhibit 6, p. 38).

On March 17, 2022, the son wrote, in part, as follows:

> from this moment on, YOU ARE NOT TO AUTHORIZE ANY TRANSPORTATION FOR [APPELLANT], TO ANY APPOINTMENT WITHOUT MY KNOWLEDGE AND CONSENT. YOU ARE NOT TO AUTHORIZE ANY TRASNPORTATION TO ANY APPOINTMENTS UNLESS MY MOM HAS BEEN DOCUMENTED CLEARED BY HER REHAB TEAM TO DO SO, ALONG WITH MY KNOWLDEGE AND CONSENT.

(Exhibit 6, p. 40).

Fallon argues that these communications make it clear that the appellant's son has no intention of working with a team, and thus essentially does not want the appellant to participate in the PACE program. The son's behavior is threatening and disruptive – he stops exams, he yells at staff, he hangs up on calls, and he refuses to take calls from people.

The appellant's son appeared at hearing by phone. He testified at length and acknowledged that his behavior was ineffective and inappropriate. He stated that he has "made amends" to the PACE team and that his behavior since the events described above has changed. He is committed to interacting with staff in a kind and appropriate manner, and he is willing to work with a team. He hopes that communication with staff can be streamlined to avoid receiving too many phone calls with the same information. He feels that his mother receives quality care and he does not want her to be disenrolled from the program. He does not want his mother to become homeless. He submitted a letter that summarizes his version of events. He writes, in relevant part, as follows:

> [Appellant's] enrollment to [sic] the MA Health/PACE Program has been active since January 31, 2022. It covers practically every need she requires to stay living as an active member of the community at Christopher Heights in Worcester. Although she is [redacted], she is doing great as a result of everything I have worked hard and long to put in place for her care over the past nineteen months.
>
> The first attempt to utilize the PACE health benefit for my mom's medical care yielded in [appellant's] disenrollment from the MA Health/PACE Program.
>
> This means [appellant] will lost her medical insurance, her primary doctors and nurses, her dental care, her vision care, her hearing care, her orthopedic care, her prescription coverage and her rent subsidy leaving her homeless – all provided by PACE.
>
> The stated reasons or the disenrollment . . . are 1) utilizing an out of network hospital emergency room, and 2) [appellant's] and my decisions to put her and/or her providers at risk.
>
> These are the events leading to the disenrollment:

On or about February 27, 2022 [appellant] had significant hip pain. I called Summit Elder Care, Grove St., Worcester about her pain. I received a call back from an on-call nurse practitioner Erin who explicitly urged me not to take my mom to St. Vincent's E.R., as it would be a 2-3 day wait and my mom would be waiting there in pain. Against my better judgment, I waited until the following Monday when [appellant] was seen. She was transported by chair van to Summit for an exam by Dr. Ali and nurse Crysi. The diagnosis was arthritis pain of the left hip. I urged them to get [appellant] to the E.R. but both Dr. Ali and Crysi urged me not to take her to the E.R., because it would be a 2-3 day wait and she would be laying there in pain. Dr. Ali prescribed acetaminophen and ibuprofen. I insisted my mom be seen by orthopedics ASAP. Later that week [appellant] was seen at Reliant by an orthopedic nurse practitioner named Chris. He x-rayed [appellant], explained the degeneration of her hip and ordered a cortisone injection into her hip joint which was completed that day.

Over the next few days [appellant's] pain was reduced and she was walking again with her walker. Then on Saturday March 5, 2022, [appellant] called me at 5:45 am and was crying because she was in such severe pain. The residence she was living at, at this time (The Residence At Orchard Grove) wanted [appellant] to be taken to the E.R. Once again I called Summit Elder Care and once again I received a call back from nurse practitioner Erin and once again advised [sic] me not to take [appellant] to the E.R. because it would be a 2-3 day wait and she'd be lying there in pain.

I was infuriated, but again, against my better judgment I waited until [March 10, 2022] and called Summit Elder Care first thing and demanded [appellant] go to the E.R. The provider nurse practitioner Mary disagreed and insisted [appellant] be brought into the Grove St. office to be examined, stating the E.R. would be a 2-3 day wait. Yet again, against my demand and better judgment, [appellant] was transported back to Summit on Grove St., she was in utter agony. My emotions were running very high, being extremely concerned for my mom's welfare while watching and listening to her in agony.

Finally [appellant] was transported to the exam room and when Mary and Crysi attempted to move my mom from the wheelchair to the exam table, my mom let out the loudest, most blood curdling scream I've ever heard a human being make, nevermind my [redacted] mother. Both Mary and Crysi kept moving my mother onto the exam table, her screams and pleas to stop were unheeded. I reacted emotionally and yelled, "Stop the exam NOW! Get the site director in her NOW! Call an ambulance NOW! I'm taking her to the E.R.!" Colleen McGuiness site director showed up within a few minutes along with the nursing supervisor Cathy. I demanded my mom be taken to the E.R. and I yelled at Mary, "See?! If you had listened to me this morning instead of talking over me, this wouldn't have happened!" Mary walked out of the room. I insisted my mom be taken to MGH Boston, where she already had a three surgeon care team in place. Colleen insisted

there weren't any ambulances that would take my mom to Boston. I stated, " that's bullshit, get an ambulance here now!" When the ambulance arrived, the paramedic asked where we were going. I stated "Mass General!" He called an on-call doctor to get approval, the doctor stated, "take the patient wherever the family wants" and with that my mom was on her way to MGH.

Not once did anyone present state that MGH was out of network nor did anyone state utilizing MGH would be cause for disenrollment.

At MGH E.R., within thirty minutes of arrival [appellant] was x-rayed. Within two hours of arrival, [appellant's] pain was very well managed with a two milligram dose of Dilaudid and she was CT-scanned. At six hours [appellant] had an MRI. The E.R. told me [appellant] would be kept overnight. The next morning, [appellant] was diagnosed with a detached iliopsoas tendon, torn muscle and internal bleeding. The E.R. doctor prescribed necessary treatment and began talking about a pain for recovery in rehab . . . . My mom was still in pain, but doing much better.

In the middle of all these events . . . I had to move my mom's apartment at Orchard Grove to Christopher Heights of Worcester, where they accept the rent subsidy paid by the PACE program.

On Thursday March [14], 2022, I called the VP of Summit Elder Care, Dr. Schreiber, to talk to him about the chain of events and wanted to come up with a workable, reasonable solution to improve communications with Summit. Dr. Schreiber spent quite a bit of time speaking with me, which I greatly appreciated. He would bring our conversation [sic] and move forward for my mom's best interest. . . .

On the afternoon of [March 14, 2022], I received a call from Colleen McGuiness and a PACE representative, stating [appellant's] is disenrolled from MA Health and the PACE Program as of May 1, 2022. I called Dr. Schreiber immediately and asked him what happened, everything was resolved 24 hours ago when I spoke to him. He stated ten women from Summit had written letters about their experience with me. Apparently they weren't favorable and Dr. Schreier stated, "I'm inclined to agree with them." I was devastated and furious. I yelled at Dr. Schreiber stating they were "covering their asses." The call ended when I hung up on him.

I admit my language and temperament were unacceptable to Colleen, Mary and Dr. Schreiber. I've made direct amends to Colleen and asked she pass on my words to the team and Dr. Schreiber, which Colleen did do.

All this said, the bottom line is my mom, [appellant], will be punished. She will lose all her healthcare coverage and he will soon become homeless.

I have applied to three different waiver programs to keep my mom on MA Health so

she can get on GAFC (Group Adult Foster Care) which would at least get her rent subsidized. [Appellant] failed to qualify for all three programs. PACE is the only option.

I'm acutely aware of my part in the breakdown of communication and what precipitated the disenrollment. I have made my amends. I am committed to wok with PACE/Summit/MA Health with a kind & cooperative attitude.

I've been under incredible stress, working with the VA for ten months to get my mom her benefits, working with PACE for five months to get my mom approved, dealing with numerous assisted living residences over a year because my mom was under an eviction notice from the previous assisted living, working with Elder Protective Services to assure my mom has everything she requires, finding her an attorney through Community Legal Aid to represent my mom through the eviction, dealing with two family members who have directly and repeatedly harassed and threatened my mom to the point [sic] I went to court three times to get restraining orders for my mom and myself against one family member. All the while, I am disabled, coping with severe pain in both knees and my lower spine. I've put off my own care for these nineteen months to address my mom's needs. . . .

I'm requesting, on behalf of my mom [appellant] to reinstate her enrollment with PACE and allow her the dignity to live out her days in peace. She deserves at least that after [redacted].

(Exhibit 3).[4]

The appellant retained counsel following the hearing.[5] The appellant's attorney submitted a legal brief in which he sets forth the series of events as described above, and argues that there has been no "pattern of hostility" on the part of the appellant or the appellant's son (Exhibit 11). He argues that the appellant lost his temper after a pattern of neglect and disregard for the appellant's health and welfare. He argues that the PACE program has failed to adequately document its disenrollment reasons per 42 CFR §460.164(d)(1), arguing that the documents referenced at hearing (a memo and an email) are both self-serving "CYA" letters created after the fact. The appellant's attorney also argues that PACE has violated 42 CFR §460.164(d)(2) in that it did not make any effort to remedy the situation. The attorney argues that the appellant's son tried to remedy the situation via his lengthy phone call with Dr. Schreiber on March 14th, and during his subsequent phone call with Colleen McGuiness wherein he apologized for his part in the communication breakdown. He argues that the PACE program, however, has made no effort at all.

[4] The appellant submitted multiple character reference letters from friends and a mental health counselor (Exhibit 3, pp. 8-21).

[5] The appellant's attorney appeared as a witness at the hearing on June 22, 2022; he was not identified as the appellant's attorney at that time and he did not offer any testimony during the hearing.

Findings of Fact

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

1. The appellant is a female in her early 90s.

2. On February 1, 2022, the appellant was enrolled in Fallon's PACE program, Summit ElderCare; the appellant continues to meet the clinical eligibility requirements of the program.

3. On March 10, 2022, the appellant was seen at the PACE program clinic due to increasingly severe hip pain. At that visit, the following events occurred:
    - The appellant's pain has worsened such that all parties agreed that the appellant should be transferred to an emergency department;
    - PACE staff recommended transfer to the emergency department at Saint Vincent's Hospital in the Worcester area; the son refused and insisted that the appellant be taken via ambulance to the emergency department at MGH in Boston;
    - During the discussions at this clinic visit, the appellant's son raised his voice and yelled at PACE staff.

4. Following the clinic visit, the appellant's son sent emails to PACE staff stating that he did not want to work with the PACE team.

5. Following the clinic visit, the appellant's son hung up on PACE staff during more than one telephone call.

6. On March 15, 2022, Fallon notified the appellant of its decision to involuntarily disenroll her from the PACE program effective May 1, 2022.

7. In the days following the issuance of the disenrollment notice, the appellant's son apologized to PACE staff for his role in events described above.

8. Since the resolution of the appellant's hip injury, there have been no further documented instances of inappropriate behavior or non-compliance of the part of the appellant's son.

9. On April 25, 2022, the appellant internally appealed this disenrollment determination; on May 2, 2022, the appellant externally appealed this action to the Board of Hearings.

10. On May 19, 2022, Fallon denied the internal appeal and upheld its initial decision.

Analysis and Conclusions of Law

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 (130 CMR 519.007(C)(1)). The MassHealth regulations set forth the following regarding PACE:

> (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
> 1. in day-health centers;
> 2. at home; and
> 3. in specialty or inpatient settings, if needed.

In determining PACE eligibility, 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% of the federal benefit rate (FBR) for an individual.

(130 CMR 519.007(C)(2)).

The PACE program is also governed by federal regulations. The federal regulations concerning involuntary disenrollment from the program are set forth in 42 CFR §460.164:

> (a) **Effective date**. A participant's involuntary disenrollment occurs after the PACE organization meets the requirements set forth in this section and is effective on the first day of the next month that begins 30 days after the day the PACE organization sends notice of the disenrollment to the participant.
>
> (b) **Reasons for involuntary disenrollment**. A participant may be involuntarily disenrolled for any of the following reasons:
> (1) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any premium due the PACE organization.

(2) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any applicable Medicaid spend down liability or any amount due under the post-eligibility treatment of income process, as permitted under §§ 460.182 and 460.184.
(3) The participant or the participant's caregiver engages in disruptive or threatening behavior, as described in paragraph (c) of this section.
(4) The participant engages in disruptive or threatening behavior, as described in paragraph (c) of this section.
(5) The participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances.
(6) The participant is determined to no longer meet the State Medicaid nursing facility level of care requirements and is not deemed eligible.
(7) The PACE program agreement with CMS and the State administering agency is not renewed or is terminated.
(8) The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

(c) **Disruptive or threatening behavior**.
(1) For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:
(i) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or
(ii) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.
(2) For purposes of this section, a participant's caregiver who engages in disruptive or threatening behavior exhibits behavior that jeopardizes the participant's health or safety, or the safety of the caregiver or others.

(d) **Documentation of disruptive or threatening behavior**. If a PACE organization proposes to disenroll a participant based on the disruptive or threatening behavior of the participant or the participant's caregiver, the organization must document the following information in the participant's medical record:
(1) The reasons for proposing to disenroll the participant.
(2) All efforts to remedy the situation.

(e) **Noncompliant behavior**.
(1) A PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others.
(2) For purposes of this section, noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

(f) **State administering agency review and final determination**. Before an involuntary disenrollment is effective, the State administering agency must review it and determine in a timely manner that the PACE organization has adequately documented acceptable grounds for disenrollment.

In this case, the Fallon determined that the appellant meets all of the PACE eligibility criteria. In accordance with the above regulations, Fallon's PACE program has attempted to deliver services to the appellant "in a specified community-based PACE program" (130 CMR 519.007(C)(2)(e)). In the course of attempting to provide services to the appellant, Fallon has determined that the appellant's son's actions and behavior has prevented the PACE program staff from effectively rendering care to the appellant, thus jeopardizing her health. By way of example, Fallon described a recent event where the appellant was experiencing acute pain and needed emergent care. Instead of following the PACE program staff's recommendation to transfer the appellant to a local hospital a few miles away, he insisted that she be transferred to a non-contracted hospital located more than 50 miles away. Further, Fallon argues that the son's behavior, which has included stopping a physical exam, yelling at staff, hanging up on calls, and refusing to take calls, all demonstrate that he does not want to work with a team and thus does not want his mother to participate in the PACE program. As a result, Fallon issued the involuntary disenrollment notice on appeal.

The appellant disagrees that involuntary disenrollment is warranted. The appellant's son argues that he lost his temper in a stressful situation, and that he has made amends. Since the time frame of his mother's hip injury, there have been no further issues. The son has stated that he is committed to interacting with staff in a kind and appropriate manner, and he is willing to work with a team. The appellant further argues that in despite of the son's actions, the PACE program has not adequately documented the disruptive or threatening behavior, and has not made any efforts to remedy the situation.

As set forth above, the PACE program offers medical and social services that are coordinated by a team of health professionals. Fallon has identified, among others, the following regulatory provisions as having particular relevance here:

> Required Services. The PACE benefit package for all participants, regardless of the source of payment, must include the following:
> (a) All Medicare-covered items and services.
> (b) All Medicaid-covered items and services, as specified in the State's approved Medicaid Plan.
> (c) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(42 CFR §460.92).

Interdisciplinary Team.

(a) Basic Requirement. A PACE organization must meet the following requirements:

(1) Establish an Interdisciplinary team at each PACE Center to comprehensively assess and meet the individual needs of each participant.

(2) Assign each participant to an interdisciplinary team functioning at the PACE Center that the participant attends.

(b) Composition of Interdisciplinary Team. The interdisciplinary team must be composed of at least the following members:

(1) Primary care physician.
(2) Registered nurse.
(3) Masters-level social worker.
(4) Physical therapist.
(5) Occupational therapist.
(6) Recreational therapist or activity coordinator.
(7) Dietician.
(8) PACE center manager.
(9) Home care coordinator.
(10)Personal care attendant or his or her representative.
(11)Driver or her representative.

(42 CFR §460.102).

(a) Access to services. A PACE organization is responsible for providing care that meet the needs of each participant across all care settings, 24 hours a day, every day of the year, and must establish and implement a written plan to ensure that care if appropriately furnished.

(b) Provision of services.

(1) The PACE organization must furnish comprehensive medical, health and social services that integrate acute and long-term care.

(2) These services must be furnished in at least the PACE Center, the home, and in-patient facilities.

(3) The PACE organization may not discriminate against any participant on the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, sexual orientation, mental or physical disability, or source of payment.

(c) Minimum services furnished at each PACE center. At a minimum, the following services must be furnished at each PACE Center:

(1) Primary care, including physicians and nursing services.
(2) Social services.
(3)Restorative therapies, including physical therapy and occupational therapy.
(4) Personal care and supportive services.
(5) Nutritional counseling.
(6) Recreational therapy.

(7) Meals.

(42 CFR §460.98).

Fallon also highlighted several provisions of the Summit ElderCare Enrollment Agreement, as follows:

> Summit Eldercare provides you with comprehensive health services, such as primary and specialty medical care, provided at our Summit ElderCare PACE Centers, affiliated health service locations or in your home. In additional to medical services, Summit ElderCare also provides a wide range of health-related and supportive services such as personal care (e.g., assistance with bathing and dressing), homemaker/chore services, recreational therapy, translation services, medical transportation, nutrition services and more. The services provided will be determined by your needs as assessed by the Summit ElderCare team of health care professionals.
>
> The purpose of Summit ElderCare is to help you remain as independent as possible We will coordinate a complete range of health and health-related services, all designed to keep you living in the community, preferably in your own home, for as long as it is feasible. We are dedicated to providing a personalized approach to your care so that you, your family and our staff get to know each other well and work closely together on your behalf.
>
> Summit ElderCare assists you with access to services 24 hours a day, seven days a week, 365 days a year. Summit ElderCare professionals monitor changes in your health status, provide appropriate care and encourage self-help and disease management. Medical, nursing and nutrition services, physical therapy, occupational therapy, social service support and in-home support are provided along with such medical specialty services such as audiology, dentistry, optometry, podiatry, psychiatry, speech therapy and more. All of these services are provided through Summit ElderCare's network of providers that include hospital and skilled nursing home care in contracted facilities. Summit ElderCare may also help you modify your home environment to increase safety and convenience, as well as mobilize assistance from your family, friends, neighbors and community service providers.
>
> **II. Special feature of Summit ElderCare**
> Some of the unique features and advantages of joining Summit ElderCare include the following:
>
> **Care Team**
> Your care is planned and provided by a Care Team of health care professionals. The team includes a physician or nurse practitioner, primary registered nurse, social worker, dietician, rehabilitation and activities staff, a home care coordinator, a

transportation coordinator, a health aide and other professionals supporting your plan of care. Each team member's special expertise is used to assess your health care needs and will call upon additional specialists, when necessary. Together with you and your family, the team creates a plan of care designed just for you. All the services you receive are coordinated and arranged by the team.

One source for all your care
You will get to know each member of your team. They will work closely with you, your family, and your caregiver(s) so you can be as healthy and independent as possible. To ensure that you receive the most appropriate care, the team must review, approve and authorize your care plan whether adding, changing or discontinuing a service. The individual care plan is agreed upon by you and your caregivers who you wish to be involved in your care decisions. The plan is modified as your needs change. The team will reassess your needs at least every six months, but more often if you experience a significant change.

Coordination of services with Medicare and Medicaid
The services offered by Summit ElderCare are available to you because of a special agreement between Fallon Health, Medicare and Medicaid (MassHealth). Summit ElderCare has the flexibility to authorize care and services according to your needs, as determined by your Care Team.

Services are provided exclusively through Summit ElderCare
Once you enroll in Summit ElderCare, you agree to receive services exclusively from Summit ElderCare employed and contracted providers. All services, except for emergency care and out-of-area urgently needed care must be authorized, arranged and coordinated by your team.

Therefore, with the exception of emergency care and out-of-area urgent care, you will no longer be able to obtain services from other doctors or medical providers under the conventional Medicare and Medicaid payment system. Once you enroll, you will be automatically disenrolled from any other Medicare and Medicaid health plan, including any Medicare Part D prescription plans.

Advantages of enrolling in Summit ElderCare
Summit ElderCare was designed and developed specifically to maintain independence or nursing home eligible older adults by offering comprehensive and coordinated services through a single organization. Our unique organizational and financing arrangements allow us to provide more flexible benefits and coordinated care than traditional health care plans or support services. Some of the other advantages to participating in the pan are:

- A team approach to care that includes you and your caregiver(s).

(Exhibit 10).

These federal regulations, along with the enrollment agreement provisions, clearly establish that the PACE program operates by utilizing a team approach, and that medical services must be rendered at PACE centers and at contracted provider sites.[6] Throughout the time period before, during, and after the March 10th clinic visit, the appellant's son's actions demonstrated noncompliance with both of these mandates. First, the son's actions - including yelling at staff, hanging up on calls, refusing to take calls, and sending rude and demanding emails – all demonstrate that at the time, he had no interest in collaborating with the team. Further, the son's decision to have his mother treated at MGH, when PACE staff had recommended a local hospital, further supports Fallon's argument that the son has refused to accept and participate in the team approach and instead chose to pursue his own course of action. There is ample evidence to conclude that the son's behavior was certainly disruptive, and possibly threatening.

In order to involuntarily disenroll a PACE participant, however, the evidence also needs to establish that the offensive behavior has jeopardized the appellant's health or safety. In support of its argument that the appellant's son's behavior has jeopardized the appellant's health, it has alleged that his communications and actions represent "a pattern of hostility, disruptive behavior and resistance to adherence to the plan of care" (Exhibit 6, p. 8). The son's hostile attitude and offensive behaviors, however, essentially arose from one major event - the appellant's worsening hip pain and the treatment she ultimately received for that muscle injury. Thus, while the son's behaviors clearly consisted of more than one outburst or inappropriate email, it seems perhaps a stretch to conclude that his actions constitute a "pattern" of behavior. Importantly, the PACE staff acknowledged that there have been no issues with the appellant or her son since the issuance of the disenrollment notice.

Additionally, the PACE provider must document its reasons for disenrolling the member, as well as all efforts to remedy the situation. The record does not document any significant efforts by the PACE staff to remedy the issue. The record reflects that the appellant's son had a lengthy (53 minute) phone conversation with the PACE medical director, Dr. Schreiber, the day before the issuance of the disenrollment notice, and another phone conversation with Dr. Schreiber and Colleen McGuiness on the same date. Dr. Schreiber's notes from these conversations include details about the son's concerns, as well as the PACE staff's proposed solutions to alleviate those concerns (Exhibit 6, pp. 58-61). Nevertheless, the following day, the PACE provider issued the notice on appeal. The timing of the notice suggests that the PACE provider did not allow time to engage in any meaningful effort to remedy the situation with the son.

As noted above, the record reflects that the appellant's son's behavior has been incredibly disruptive. Through his testimony and submissions, however, he has agreed that going forward, he will collaborate with the team and treat all staff in a respectful manner. Further, if it was previously unclear in some way, the son is now on notice that all of the appellant's care must be authorized by PACE and must, if possible, be delivered at PACE centers or at other contacted providers (this does not include MGH). Any further incidents akin to the ones described above could suggest a pattern of disruptive behavior, and could lead to another involuntary disenrollment notice.

[6] Notably, the enrollment agreement makes an exception to this rule for emergency care.

On this record, Fallon has not provided a sufficient basis for its decision to involuntarily disenroll the appellant from the PACE program.

The appeal is approved.

Order for Fallon

Rescind notice on appeal and do not disenroll the appellant from Summit ElderCare.

Implementation of this Decision

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: [redacted]

Fallon Health
Member Appeals and Grievances
10 Chestnut Street
Worcester, MA 02126

[redacted]

[redacted]