

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208155
Decision Date:	12/29/2022	Hearing Date:	12/08/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se

Appearance for Element Care:

Via telephone:

Carla Recinos Guzman, Participant Services
Manager

Mary Anne McGuirk, LCSW

Kristen Bardol, PT

Cole Gill, Social Worker

Amber Avery, OT



*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 for All Inclusive Care for the Elderly (PACE)
Decision Date:	12/29/2022	Hearing Date:	12/08/2022
Element Care's Rep.:	Carla Recinos Guzman, et al	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South 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

Through a notice dated October 24, 2022, Element Care, a MassHealth Program for All-Inclusive Care for the Elderly (PACE), notified the appellant that it denied coverage for a power wheelchair (Exhibit 1). The appellant filed this appeal in a timely manner on October 26, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by Element Care

The MassHealth PACE contractor, Element Care, denied the appellant's request for a power wheelchair.

Issue

The appeal issue is whether Element Care was correct in denying the appellant's request for authorization of a power wheelchair.

Summary of Evidence

Element Care, on behalf of MassHealth, appeared at hearing via telephone and was represented by its Participant Services Manager, two social workers, an occupational therapist, and a physical therapist. On October 3, 2022, Element Care's Interdisciplinary Team (IDT) denied the appellant's request for a power wheelchair because he demonstrated poor safety awareness and committed many safety errors that could lead to injury with the power wheelchair in the community. He demonstrated an inability to adapt to changes in the community environment. The therapists who completed the assessment also indicated that the appellant continued to be safe in his current manual wheelchair. The appellant appealed the decision internally and it was reviewed by the Internal Review Board who met with both the appellant and Element Care's IDT. On October 24, 2022, Element Care informed the appellant that the Internal Review Board upheld the decision and the request for a power wheelchair was denied for the same reasons. This is the notice currently under appeal.

The Element Care physical therapist stated that the appellant is able to independently maneuver the manual wheelchair, but he is unable to do the ramp outside his building for which he has assistance. As to the power wheelchair, he was able to operate it safely in an indoor environment at slow speeds; however, in the community and outdoors, he was unsafe with it. He showed significant lapses in safety and judgment when in an unpredictable environment and poor use of the power and speed controls. When asked to cross the street, he initially attempted to do so without using or looking at traffic lights for when it would be safe to cross. When asked/cued to stop and cross safely, he initially stated that he should have looked for traffic and was unable to state, without a second cue, to use the crosswalk button and wait for lights. After pushing the crosswalk button, the walk light in the direction he was heading in was out, so when the orange "stop" hand light went out without changing to the white "walk" sign, the appellant did not initially move or attempt to cross, nor did he scan the environment for other "walk" sign lights that he could have referred to. While he was waiting, a nearby pedestrian began to shout "Go! Cross the street! The light says Go!" the appellant seemed startled and attempted to cross, but the light had already changed back to "do not cross." The appellant needed cueing that he missed the light and needed to press it again and wait. When returning from across the street, the appellant was again delayed in initiating crossing on the walk light. When halfway across the street, the appellant increased the speed of the wheelchair to try to hurry across. Additionally, he was noted trying to transfer into the power wheelchair while it was unlocked and without his feet in proper position.

The appellant responded that he has been totally dependent on a wheelchair for the last four years. He has had a power wheelchair in the past which was paid for by Tufts. He stated that he did not have enough training with the power wheelchair and would work on whatever he needed to do to pass the assessment. He had cataract surgery and now wears glasses, so can see more clearly. He currently uses his manual wheelchair, but his arms are bad and they ache. He has severe Multiple Sclerosis (MS) which is why he joined Element Care. He needs the power wheelchair because his MS is progressing.

One of the social workers stated that when the appellant arrived at Element Care, the appellant's last power wheelchair had such significant damage, they had to have the appellant stop using it. The physical therapist added that the appellant totaled the last power wheelchair beyond repair within nine months of obtaining it, due to errors in judgment while in the community. There has been a noted change in the appellant's cognitive impairment. His insight, problem solving abilities, and executive functioning have decreased. While he is ok in a closed environment, he can't make decisions quickly and safely enough in the community, in a changing environment. Element Care has been working with him and despite training, they have not seen an improvement in his safety decision making.

Findings of Fact

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

1. On October 24, 2022, MassHealth, through its agent Element Care, denied the appellant's request for a power wheelchair (Testimony and Exhibit 1).
2. The October 24, 2022 notice stated that request for the power wheelchair was denied for the following reasons:
 - the appellant demonstrated poor safety awareness and committed many safety errors during the assessment that could lead to injury;
 - the appellant is unable to adapt to changes in the community environment; and
 - the appellant continues to be safe in his current wheelchair.(Testimony and Exhibit 1).
3. The appellant filed this appeal in a timely manner on October 26, 2022 (Exhibit 2).
4. The appellant has multiple sclerosis and has been dependent on a wheelchair for the past four years (Testimony and Exhibit 4).
5. During the assessment conducted by the Element Care team, the appellant was able to safely maneuver the power wheelchair in a closed, indoor environment, but was unsafe in the community and outdoors, where he exhibited poor decision-making and control of the wheelchair when crossing the street. He also tried to transfer into the power wheelchair while it was unlocked and without his feet in proper position. (Testimony and Exhibit 4).
6. The appellant previously had a power wheelchair which he totaled beyond repair within nine months due to errors in judgment while out in the community (Testimony).
7. The Element Care team has noted a change in the appellant's cognitive impairment and a decline in his insight, problem solving abilities, and executive functioning (Testimony).

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)).

PACE provides participants all the care and services covered by Medicare and Medicaid, as authorized by the interdisciplinary team (IDT), as well as additional medically necessary care and services not covered by Medicare and Medicaid. There are no limitations or condition as to amount, duration or scope of services and there are no deductibles, copayments, coinsurance, or other cost sharing that would otherwise apply under Medicare or Medicaid. The IDT assesses the participant's needs and develops a comprehensive care plan that meets the needs of its participants across all care settings on a 24 hour basis, each day of the year. Social and medical services are provided primarily in an adult day health care center, but are supplemented by in-home and referral services as needed.

See Centers for Medicare and Medicaid Services, Programs of All-Inclusive Care for the Elderly (PACE) Manual, CMS Pub. 100-11 ["PACE Manual"], Ch. 1, § 30.3 (Rev. 2, June 9, 2011) (available at <http://www.cms.gov> - last checked December 23, 2022); see also 42 USC § 1395eee.

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).¹

At the hearing, Element Care gave a full explanation regarding why the IDT decided to deny the appellant's request for a power wheelchair. There is no evidence to suggest that this decision was inappropriate given the assessment of the appellant using the power wheelchair and the appellant's poor safety awareness, safety errors, and inability to adapt to changes in the community environment. For these reasons, Element Care's decision was correct and the appeal is DENIED.

Order for Element Care

None.

¹ 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).

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Element Care, Attn: Carla Recinos Guzman, 37 Friend Street,
Lynn, MA 01902