

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2208416
<b>Decision Date:</b>	2/2/2023	<b>Hearing Date:</b>	12/13/2022
<b>Hearing Officer:</b>	Scott Bernard		

Appearance for Appellant:

*Pro se via telephone*

Appearance for Cambridge Health Alliance  
(CHA)/PACE:

Kathryn Tylander, PT, DPT *via telephone*  
Dr. Jonathan Burns *via 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Program of All Inclusive Care for the Elderly (PACE)/Long Term Care (LTC)
<b>Decision Date:</b>	2/2/2023	<b>Hearing Date:</b>	12/13/2022
<b>CHA/PACE Reps.:</b>	Kathryn Tylander, PT, DPT; Dr. Jonathan Burns	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Quincy Harbor South		

## 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 27, 2022, the PACE provider denied the appellant's request for continued short-term nursing facility care and recommended a transition to Long Term Care (LTC). (See 130 CMR 519.007(C) and Exhibit (Ex.) 4, p. 54). The appellant filed this appeal in a timely manner on November 10, 2022. (See 130 CMR 610.015(B) and Ex. 1, p. 1). A denial of services by a PACE provider give grounds for appeal. (See 130 CMR 610.032).

## Action Taken by CHA/PACE

The PACE provider denied the appellant's request for continued short-term nursing facility care and recommended that the appellant transition to LTC services.

## Issue

The appeal issue is whether the PACE provider correctly made its determination.

## Summary of Evidence

The appellant is an individual over the age of 65. (Ex. 4, p. 60). The PACE provider stated that it denied

coverage for continued short-term skilled nursing care in a nursing facility for the appellant. The PACE provider recommended that the appellant receive care at a long-term level.

The PACE provider representatives quoted from the provider's PACE enrollment agreement. PACE is a unique model of care and a managed Medicare and Medicaid replacement program. (Ex. 4, pp. 3-39). Determinations concerning services are performed by an Interdisciplinary Team (IDT). (Id.). IDT members make clinical judgments based on each case and can flex benefits but do utilize the basic Medicare and Medicaid guidance as well as MassHealth regulations. (Id.). If you are a MassHealth member and it is determined by your IDT that you require short term nursing facility placement up to six months and that it is expected you will be able to return to safe, independent living in the community, you may remain at the MassHealth community financial eligibility standard for that length of time, in order to maintain your community residence. (Id.). If at any time it is determined that you require a permanent residency in the nursing facility, you will be required to share in the cost of nursing facility care. (Id.).

The PACE provider representatives stated that the appellant has demonstrated a reliance on the nursing facility as her primary residence. She has been a resident in a short-term rehabilitation setting since September 2, 2022. (Ex. 4, p. 47). Prior to this, the appellant was hospitalized from May 19, 2022 to June 7, 2022 and required the use of a skilled nursing facility from June 7, 2022 to June 28th, 2022. (Id.). The appellant returned to a short-term rehabilitation facility from July 7, 2022 to August 3, 2022. (Id.). Unfortunately the appellant was hospitalized from August 24, 2022 to September 2, 2022. (Id.). If the appellant is still in a facility at the time of the hearing, she will have spent 153 days in short term rehab since June 7, 2022.

The PACE provider performed a reevaluation of the appellant short-term rehabilitation services in October 2022. A physical therapist for the PACE provider noted that the appellant required assistance with standing-up, getting out of bed, and sitting in her wheelchair. (Ex. 4, p. 46-53). Additionally, the appellant had complex medical issues which had been a barrier to her progress. (Id.). For that reason, the PACE provider's IDT decided to deny further short-term rehabilitation. (Ex. 1, pp. 2-3; Ex. 4, pp. 40-41). The PACE provider notified the appellant of this determination in writing on October 14, 2022. (Id.). The appellant appealed the initial denial and that appeal was reviewed by the Associate Chief of Care Management at the PACE provider. Based on a review of the appellant's medical records and a statement the appellant provided, the Associate Chief upheld the denial and recommended a transition to long term care in a notice dated October 27, 2022. (Ex. 4, p. 54). The Associate Chief's rationale for this decision was a combination of the appellant's chronic comorbid conditions, which she determined could not be safely managed in a home setting. (Id.).

The appellant stated that she wanted to go home since she has a home to go to. The appellant did not want to continue staying in a nursing facility. The appellant stated that she would be able to get by at home. Her home is handicap accessible. The appellant stated that she did not need 24 hour per day care. The appellant stated that she would need someone to be with her overnight, however. The appellant stated that she was able to toilet herself and is able to get herself out of bed. The appellant was told that if she did these things she could be released from the facility and return home.

The appellant did not feel safe in the nursing facility. She stated that there have been 20 cases of COVID-19 in the facility. The appellant has had COVID and does not want to get it again. She stated

that she wanted to return home, where she could be away from other people. The appellant alleged that the facility is understaffed, and the staff is not responsive, as the appellant has had to cry out for her medications. The appellant also stated that the facility is a mess. The appellant stated that she wanted to check herself out of the facility and get a rideshare home. The appellant did not want to be in PACE anymore.

The PACE representatives stated that when she lived in the community, the appellant required 32 hours per week of “home care” services. At this time, the appellant requires 24 hours of care, which cannot be provided in the community. Furthermore, the PACE provider’s community aid staff are not trained to perform certain assistance such as assistance with lifts, which the appellant requires. The PACE representatives stated that they believed that the determination was in the appellant’s best interests.

## Findings of Fact

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

1. The appellant is an individual over the age of 65. (Ex. 4, p. 60).
2. PACE is a unique model of care and a managed Medicare and Medicaid replacement program. (Ex. 4, pp. 3-39).
3. Determinations concerning services are performed by an IDT. (Ex. 4, pp. 3-39).
4. IDT members make clinical judgments based on each case and can flex benefits but do utilize the basic Medicare and Medicaid guidance as well as MassHealth regulations. (Ex. 4, pp. 3-39; Testimony of PACE representatives).
5. If a PACE IDT determines that a MassHealth member in PACE requires short term nursing facility placement up to six months and that it is expected the member will be able to return to safe, independent living in the community, the member may remain at the MassHealth community financial eligibility standard for that length of time, in order to maintain community residence. (Ex. 4, pp. 3-39; Testimony of PACE representatives).
6. If at any time it is determined that the member requires a permanent residency in the nursing facility, you will be required to share in the cost of nursing facility care. (sEx. 4, pp. 3-39; Testimony of PACE representatives).
7. The appellant was hospitalized from May 19, 2022 to June 7, 2022 and required the use of a skilled nursing facility from June 7, 2022 to June 28th, 2022. (Ex. 4, p. 47).
8. The appellant returned to a short-term rehabilitation facility from July 7, 2022 to August 3, 2022. (Ex. 4, p. 47).
9. The appellant was hospitalized from August 24, 2022 to September 2, 2022. (Ex. 4, p. 47).
10. As of the date of the hearing, the appellant has continuously been a resident of a short-term

rehabilitation setting since September 2, 2022. (Ex. 4, p. 47).

11. In October 2022, the PACE provider *via* the IDT performed a reevaluation of the appellant's short-term rehabilitation services. (Testimony of PACE representatives).
12. An evaluation by a physical therapist for the PACE provider noted the that the appellant required assistance with standing-up, getting out of bed, and sitting in her wheelchair the appellant had complex medical issues which had been a barrier to her progress. (Ex. 4, p. 46-53).
13. Based on the physical therapist's evaluation, the IDT decided to deny further short-term rehabilitation services. (Testimony of PACE representatives).
14. The PACE provider sent the appellant a notice denying further short-term rehabilitation on October 14, 2022. (Ex. 1, pp. 2-3; Ex. 4, pp. 40-41).
15. The appellant appealed this denial. (Testimony of PACE representatives).
16. The Associate Chief of Care Management at the PACE provider reviewed the appeal.
17. Based on a review of the appellant's medical records and a statement the appellant provided, the Associate Chief upheld the denial and recommended a transition to long term care in a notice date October 27, 2022. (Ex. 4, p. 54).
18. The Associate Chief's rationale for this decision was a combination of the appellant's chronic comorbid conditions, which she determined could not be safely managed in a home setting. (Ex. 4, p. 54).

## 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)). Under PACE 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. (130 CMR 519.007(C)(1)(a)). MassHealth administers the program in Massachusetts as the Elder Service Plan (ESP). ((130 CMR 519.007(C)(1)(b)). Persons enrolled in PACE have services delivered through managed care in day-health centers; at home; and in specialty or inpatient settings, if needed. (130 CMR 519.007(C)(1)(c)).

If a MassHealth member chooses to enroll in a PACE program, the following conditions apply: (a) Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, copayments, coinsurance, or other cost-sharing do not apply; and (b) the member, while enrolled in a PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization. (42 CFR 460.94). 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; and (c) other

services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status. (42 CFR 460.92). Any service that is not authorized by the interdisciplinary team is an excluded service, even if it is a required service, unless it is an emergency service. (42 CFR 460.96).

The appellant has not shown that the PACE provider acted incorrectly in making its determination. The record shows that the appellant has either been hospitalized or in short-term rehabilitation for much of the time between May 2022 and the date of the hearing. The PACE provider determined that it would not authorize further extensions of the appellant's short-term rehabilitation and recommended that the appellant receive a long-term nursing facility services moving forward. Effectively, the appellant would no longer be able to live in the community. Although the appellant is clearly upset by this determination, the PACE provider is the sole provider of the appellant's Medicaid and Medicare benefits. The appellant provided no evidence (for example medical records) showing that the PACE provider was incorrect concerning her continued ability to live in the community. The decision to deny continued short-term care was entirely proper under the rules for PACE.<sup>1</sup>

For the foregoing reasons, the appeal is DENIED.

## **Order for CHA/PACE**

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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

Cambridge Health Alliance, Attn: Kathryn Tylander, PT, DPT, Manager of Quality and Compliance,  
163 Gore Street, Cambridge, MA 02141

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<sup>1</sup> That said, the PACE regulations do permit members to voluntarily disenroll from the program without cause at any time. (See 42 CFR § 460.162(b)). A participant's voluntary disenrollment is effective on the first day of the month following the date the PACE organization receives the participant's notice of voluntary disenrollment. (42 CFR § 460.162(a)). This is statement of the appellant's rights under the regulations and should not be interpreted as encouragement or discouragement of any particular action by the appellant.