

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2300191

Decision Date: 3/6/2023

Hearing Date: 02/07/2023

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearances for Cambridge Health Alliance PACE:

Kathryn Tylander and Susan Donnelly



*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:	PACE - DME
Decision Date:	3/6/2023	Hearing Date:	02/07/2023
Cambridge Health Alliance PACE's Reps.:	Kathryn Tylander and Susan Donnelly	Appellant's Rep.:	Daughter
Hearing Location:	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

On 12/29/2022, Cambridge Health Alliance ("CHA") informed the appellant, a MassHealth member who is enrolled in CHA's program of all-inclusive care for the elderly ("PACE"), that it had processed the appellant's internal appeal and denied coverage for an electric stair lift for her home (stair lift) (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on 01/09/2023 (130 CMR 610.015(B); Exhibit 2)¹. A managed care contractor's decision to limit requested services is grounds for appeal (130 CMR 610.032(B)), and a PACE plan must allow for external review of its coverage decisions (42 C.F.R. § 460.124).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by Cambridge Health Alliance (CHA)

CHA denied the appellant's request for an electric stair lift for her home.

Issue

Did CHA correctly deny the appellant's request for an electric stair lift for her home?

Summary of Evidence

CHA was represented by two representatives who testified telephonically. Prior to the hearing, CHA submitted an exhibit packet that included records concerning the appealed decision (Exhibit 4). Referencing the packet, CHA's representatives noted that the appellant is [REDACTED] years of age and is enrolled in CHA's PACE. She is largely bed-ridden and has a bedroom in a second-floor apartment. According to the appellant's daughter, the appellant only leaves her bedroom for medical appointments. She receives services from a visiting nurse and personal care attendants in the home.

On 11/07/2022, a service request was initiated by the appellant's daughter requesting an electric stair lift for her home to assist her when going up and down stairs from her second-floor apartment. The appellant's daughter informed CHA that the appellant is weak and has balance issues. She is ambulatory and is usually able to go downstairs with assistance but needs total assistance to go up the stairs when she returns to her bedroom. The appellant needs assistance when she goes to medical appointments, which is "rarely," due to her anxiety disorder.

The CHA representatives noted that as a result of this service request, CHA's Interdisciplinary Team (IDT) convened a meeting to consider this request. The IDT included two primary care providers (MD/NP), a social worker, a physical therapist, an occupational therapist, a home care coordinator, center director, personal care attendant representative, and a transportation representative. On 11/14/2022, The IDT denied the request for the stair lift and suggested that the appellant utilize services from an ambulance service to carry her up and down stairs when she needs to go to her "rare" medical appointment.

The appellant's daughter filed an internal appeal with CHA. On 12/29/2022, CHA's Associate Chief of Care Management, conducted an independent review of the request for a stair lift and she denied the internal appeal. The letter to the appellant states:

With consideration of documentation from the interdisciplinary team of CHA PACE as well as the statement provided by you, [the independent reviewer] upheld the denial of an electric stair lift. The reviewer notes that she was able to verify that carry-up/carry-down service is available in your geographical region. Additionally,

the physical setup of your home does not lend itself to easy electric chair lift installation. It is possible these barriers can be overcome, but may increase the cost and complexity. Further, installation of an electronic chair lift does not solve all of the [appellant's] mobility problems getting to and from medical appointments, as there are other physical barriers present with living on the second floor of the home. Overall, the limited benefits of having an electronic chair lift do not support the extensive cost and complexity. [The appellant's] medical needs are able to be met with carry-up and carry-down service, which is available through [the local Ambulance service].

(Exhibit 4.)

The CHA representatives stated that in addition to the above reasons for the denial, MassHealth does not cover permanent home modifications, including stair lifts. In addition, federal regulations exclude service not authorized by the IDT, unless it is an emergency service (Exhibit 4).

The appellant's daughter appeared at the fair hearing telephonically and she testified that the stair lift is necessary because the appellant cannot navigate the stairs independently, due to weakness, balance issues, and anxiety. She testified that the appellant attends medical appointments once every three months. They tried to use the ambulance service for assistance carrying the appellant up and down the stairs; however, the service is unreliable. Sometimes the ambulance cannot come at the time required due to being diverted to an emergency. The appellant has anxiety and cannot get comfortable with the ambulance staff because she once hit her head when being assisted into a wheelchair. A nurse comes to the home to care for the appellant and she has personal care attendant services ("PCA"). The PCAs do not assist the appellant up and down the stairs "due to liability issues." The daughter testified that the appellant would like to attend additional doctor appointments and adult day care. If she were provided with the stair lift, she could freely go out of the home "about four times per week."

The CHA PACE representatives responded that, according to the appellant's care givers and the clinical documentation, it is unlikely that the appellant would want to leave her bedroom on a regular basis to attend adult day care, due to her anxiety and her functional status. The also explained that CHA has an agreement with the ambulance service to provide assistance to the appellant for going up and down the stairs. The CHA representative stated they will reach out to the ambulance service to ensure that they will be available for the appellant's needs when going to medical appointments.

Findings of Fact

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

1. The appellant is enrolled in the PACE plan with Cambridge Health Alliance

(Testimony).

2. The appellant is ■ years of age and lives in a second-floor apartment. She is able to ambulate with assistance; however, she is easily fatigued, she suffers with anxiety and she needs maximum assistance when navigating stairs (Testimony; Exhibit 4).
3. The appellant needs assistance on stairs when she attends medical appointments, approximately once every three months (Testimony).
4. On 11/07/2022, a service request was initiated by the appellant's daughter requesting an electric stair lift for the appellant's home to assist her when going up and down stairs from her second-floor apartment. The appellant's daughter informed CHA that the appellant is weak and has balance issues. She is ambulatory and is usually able to go downstairs with minimal assistance but needs total assistance to go up the stairs when she returns to her bedroom (Testimony; Exhibit 4).
5. CHA's Interdisciplinary Team (IDT) convened a meeting to consider the appellant's request for a stair lift. The IDT included two primary care providers (MD/NP), a social worker, a physical therapist, an occupational therapist, a home care coordinator, center director, personal care attendant representative, and a transportation representative (Testimony; Exhibit 4).
6. On 11/14/2022, The IDT denied the request for the stair lift and suggested that the appellant continue to utilize services from an ambulance service to carry her up and down stairs when she needs to go to her "rare" medical appointments (Testimony; Exhibit 4).
7. The appellant's daughter filed an internal appeal with CHA (Testimony; Exhibit 4).
8. On 12/29/2022, CHA's Associate Chief of Care Management, conducted an independent review of the request for a stair lift and she denied the internal appeal. The letter to the appellant states:

With consideration of documentation from the interdisciplinary team of CHA PACE as well as the statement provided by you, [the independent reviewer] upheld the denial of an electric stair lift. The reviewer notes that she was able to verify that carry-up/carry-down service is available in your geographical region. Additionally, the physical setup of your home does not lend itself to easy electric chair lift installation. It is possible these barriers can be overcome, but may increase the cost and complexity. Further, installation of an electronic chair lift does not solve all of the [appellant's] mobility problems getting to and from medical appointments, as there are other physical barriers present with living on the second floor of the home. Overall, the limited benefits of having an

electronic chair lift do not support the extensive cost and complexity. [The appellant's] medical needs are able to be met with carry-up and carry-down service, which is available through [the local Ambulance service].

(Testimony; Exhibit 4).

9. The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on 01/09/2023 (130 CMR 610.015(B); Exhibit 2).

Analysis and Conclusions of Law

The Programs of All-Inclusive Care for the Elderly is one of several Medicaid waiver programs that allows state Medicaid agencies, such as MassHealth, to experiment with different reimbursement methods for providing care to frail and elderly populations. See, Centers for Medicare and Medicaid Services (CMS), Programs of All-Inclusive Care for the Elderly (PACE) Manual, CMS Pub. 100-11 ["PACE Manual"], Ch. 1, §10 (Rev. 2, June 9, 2011) (available at <http://www.cms.gov> - last checked Feb. 17, 2023):

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 conditions 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.

(Id. at §30.3; see also, 42 U.S.C. §1395eee.)

Federal regulations at 42 CFR §460.102 address the necessity for, and composition of, the PACE interdisciplinary team, or IDT, as follows:

(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) Master's-level social worker.
- (4) Physical therapist.
- (5) Occupational therapist.
- (6) Recreational therapist or activity coordinator.
- (7) Dietitian.
- (8) PACE center manager.
- (9) Home care coordinator.
- (10) Personal care attendant or his or her representative.
- (11) Driver or his or her representative.
- (c) Primary care physician.
- (1) Primary medical care must be furnished to a participant by a PACE primary care physician.
- (2) Each primary care physician is responsible for the following:
 - (i) Managing a participant's medical situations.
 - (ii) Overseeing a participant's use of medical specialists and inpatient care.
- (d) Responsibilities of interdisciplinary team.
- (1) The interdisciplinary team is responsible for the initial assessment, periodic reassessments, plan of care, and coordination of 24 hour care delivery.
- (2) Each team member is responsible for the following:
 - (i) Regularly informing the interdisciplinary team of the medical, functional, and psychosocial condition of each participant.
 - (ii) Remaining alert to pertinent input from other team members, participants, and caregivers.
 - (iii) Documenting changes of a participant's condition in the participant's medical record consistent with documentation policies established by the medical director.
- (3) The members of the interdisciplinary team must serve primarily PACE participants.
- (e) Exchange of information between team members. The PACE organization must establish, implement, and maintain documented internal procedures governing the exchange of information between team members, contractors, and participants and their caregivers consistent with the requirements for confidentiality in §460.200(e).

Further, 42 CFR §460.92 provides that all PACE participants must have benefits that include all Medicare-covered items and services, and all Medicaid-covered items and services, as specified in the State's approved Medicaid plan, and other services as determined necessary by the IDT to improve and maintain the participant's overall health status.

In addition, regulations at 42 CFR §460.96 address services that are excluded under the PACE program, as follows:

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.

(b) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and nonmedical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care).

(c) Cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed part of the body resulting from an accidental injury or for reconstruction following mastectomy.

(d) Experimental medical, surgical, or other health procedures.

(e) Services furnished outside of the United States, except as follows:

(1) In accordance with §424.122 and §424.124 of this chapter.

(2) As permitted under the State's approved Medicaid plan.

(Emphasis added).

Thus, the IDT is given broad latitude to assess a participant's needs for particular services. See, 42 CFR §§460.102-460.106.

The PACE organization must have a grievance and appeals process in place to address participant concerns regarding decisions made by the PACE organization. See, 42 CFR §§460.121-460.122. In addition to an internal appeal process, a PACE participant is entitled to an external review depending on their Medicare and Medicaid status. See, 42 CFR §460.124; PACE Manual, Ch. 11, §§20.4-20.

In this matter, the issue is one of medical necessity. As MassHealth's agent, CHA PACE must adhere to the "medical necessity" standard set forth in MassHealth regulations at 130 CMR 450.204(A), which states as follows:

The MassHealth agency will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "medically necessary" if:

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

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

(Emphasis added).

Additionally, MassHealth regulations at 130 CMR 409.414, Non-covered Services, state in pertinent part:

The MassHealth agency does not pay for the following:

(J) home or vehicle modifications, including but not limited to, ramps, elevators, or stair lifts;...

The appellant has requested that the PACE provide her with a stair lift so she can go up and down the stairs from her second-story apartment when she attends medical appointments once every three months. Although she is able to ambulate, she needs hands-on assistance up and down the stairs. The PACE IDT denied the appellant's request on the basis of medical necessity, indicating that she has the use of a local ambulance service that has been arranged to carry her up and down stairs so that she can attend her medical appointments.

The appellant, through her daughter, asserts that the ambulance services available to her are not ideal because of the appellant's anxiety. Also, the PCAs do not assist the appellant with mobility up and down the stairs, "due to liability issues."

In evaluating the appellant's request in light of the medical necessity regulation above, I am not persuaded that there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the stair lift, that is more conservative or less costly to the PACE. The appellant's representatives presented no only anecdotal evidence to satisfy this second prong. Moreover, MassHealth regulations specifically state that a stair lift is a permanent home modification that is not

a covered service. I therefore conclude that the PACE denial of the stair lift is supported by the facts in the record as well as the above regulations.

As such, this appeal is denied.

Order for Cambridge Health Alliance

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]