

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2301091
<b>Decision Date:</b>	4/19/2023	<b>Hearing Date:</b>	03/15/2023
<b>Hearing Officer:</b>	Paul C. Moore		

**Appellant Representatives:**



**Harbor Health Services (PACE)  
Representatives:**

Pamela Azar, O.T.R./L., Director of Quality and Compliance; Zarina Jamal, R.N., Director of Elder Service Plan (ESP) Membership Retention; Mardi McMahon, R.N., Director of Clinical Services; Regina McKenzie, R.N., Manager of Care Coordination and Utilization; Gabriela Ortiz, R.N., membership nurse; Susan Hardy, M.D., medical director (all from Harbor Health Services, and all by Microsoft Teams)



*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)
<b>Decision Date:</b>	4/19/2023	<b>Hearing Date:</b>	03/15/2023
<b>PACE Reps.:</b>	Ms. Azar et al.	<b>Appellant Reps.:</b>	Counsel, daughter/POA
<b>Hearing Location:</b>	Remote via Microsoft Teams		

## Authority

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

## Jurisdiction

On January 23, 2023, Harbor Health, MassHealth's agent for participants in the Program of All-Inclusive Care for the Elderly (PACE), informed the appellant that it had determined that she is unable to live safely in a community setting, and it therefore had denied her enrollment in the Elder Service Plan (ESP) (Exh. 1). The appellant, through her daughter and her attorney, filed this appeal with the Board of Hearings (BOH) in a timely manner on February 7, 2023 (130 CMR 610.015(B); Exh. 2). A PACE organization's decision to deny enrollment is grounds for appeal to BOH (130 CMR 610.032(B)).<sup>1</sup>

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<sup>1</sup> Pursuant to 130 CMR 519.007(C), "Program of All-inclusive Care for the Elderly (PACE):"

(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

1. in day-health centers;

# Action Taken by Harbor Health

Harbor Health denied the appellant's application for PACE enrollment.

## Issue

Did Harbor Health correctly deny the appellant's PACE application?

## Summary of Evidence

Harbor Health was represented at hearing by its director of quality and compliance, director of ESP membership retention, medical director, director of clinical services, manager of care coordination and utilization, and a membership nurse. The appellant was represented at hearing by her daughter (who is her attorney-in-fact), and by an attorney. All parties and witnesses appeared via Microsoft Teams.

Harbor Health's director of quality and compliance, Ms. Azar, testified that the appellant, who is over age 65, widowed and enrolled in Medicare, initiated the PACE enrollment process in November, 2022. According to Ms. Azar, the PACE application process is threefold, as follows: (1) the applicant's completed MassHealth application; (2) clinical eligibility, as determined by the state's approval of the completed Minimum Data Set – Home Care (MDS-HC); (3) the PACE Interdisciplinary Team (IDT) review of clinical appropriateness of the applicant. On November 29, 2022, Ms. Ortiz, a PACE membership nurse, assessed the appellant in person at [REDACTED], an assisted living facility ("the ALF") in [REDACTED], and made the following pertinent findings about the appellant:

- the appellant cannot grasp ideas and interview questions in her primary language (English);
- the appellant cannot take her medications on her own and has difficulty swallowing her medications;
- the appellant has both short-term and long-term memory loss;
- the appellant is incontinent of both bladder and bowel, and has frequent urinary tract infections (UTIs);
- the appellant requires physical assistance and cueing when she eats;
- the appellant had a fall at her ALF in [REDACTED] 2022, resulting in injuries that required medical treatment, and she has had multiple hospitalizations due to falls;

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2. at home; and

3. in specialty or inpatient settings, if needed.

- the appellant requires physical assistance with all of her instrumental activities of daily living (IADLs)
- the appellant is oriented to self only, with minimal eye contact and minimal verbal communication;
- the appellant requires assistance for transfers, she requires total care for bathing, dressing, and toileting, and requires some assistance with eating; and
- the appellant was confused and disoriented, with impaired judgment.

(Exh. 7, pp. 3-7)

Ms. Azar testified that the Harbor Health IDT subsequently met to consider the results of this assessment, and expressed concern about the level of care the appellant requires. As a result, they asked a PACE home care nurse to make an additional in-home assessment of the appellant; this occurred on [REDACTED] 2023 (Testimony).

The home care nurse documented in a nurses note dated [REDACTED], 2023 that the appellant has been residing on a locked memory care unit at her ALF since 2019, with staff available 24 hours per day. On the date in question, the appellant was seated in a wheelchair. An ALF nurse was present at the assessment, and the nurse reported that the appellant is able to ambulate with a walker, but sometimes refuses to do so. On those occasions, when the ALF aides try to get the appellant into a wheelchair, she is sometimes resistive (Exh. 7, p. 11). The nurse documented that sometimes when the appellant's medications are handed to her, she pools them in her cheeks. The nurse also documented that the appellant has sessions with physical therapy, but staff reported that they had not seen any improvement (*Id.*). The ALF nurse also reported that the appellant is "taking up all our staff's time" (*Id.*). The home care nurse also documented that the appellant "needs a lot of encouragement to ambulate otherwise she will just sit in her chair" (*Id.*). The home care nurse documented the following diagnoses of the appellant: major depression; Alzheimer's dementia; eczema; anxiety; anemia; bilateral lower extremity edema; other abnormalities of gait and mobility; chronic embolism and thrombosis of inferior vena cava; dysphagia, oropharyngeal phase; repeated falls; a history of Covid-19 infection; and spondylopathy in the cervical region (*Id.*).

Ms. Azar testified that the home care nurse's assessment was presented to the Harbor Health clinical enrollment team, which concluded that even with PACE supports, the safety of the appellant could not be maintained in the community. The clinical enrollment team recommended a denial of clinical enrollment. The clinical enrollment team forwarded this decision to Ms. Azar and Ms. Jamal, director of ESP membership retention, for review, and they agreed with this determination. Thereafter, Ms. Azar forwarded an e-mail to a state-administering agent for PACE, E.B., at the Executive Office of Health and Human Services, notifying E.B. of the intended denial.<sup>2</sup> E.B. approved the planned denial. On January 23, 2023, an enrollment denial notice was sent to the

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<sup>2</sup> Initials are used to protect confidentiality.

appellant's daughter, with appeal rights (Testimony, Exh. 1).<sup>3</sup>

Ms. Azar acknowledged that a MassHealth notice of eligibility dated January 3, 2023 appeared to approve the appellant for membership in PACE (and for MassHealth Standard coverage); however, Ms. Azar asserted that this notice pertained to her financial and categorical eligibility, but did not relate to the appellant's clinical eligibility for PACE (Testimony, Exh. 11).

Documents in evidence reflect that a psychiatrist invoked the appellant's "power of attorney" and health care proxy on May 21, 2019 due to the appellant's mental incapacity (Exh. 6).

The appellant's daughter testified that the appellant resides on a locked memory-care unit at her ALF. There is a nurse on call for the unit at all times, although a nurse is not always physically present on the unit. Hourly checks of the residents on the unit are conducted by resident care assistants (Testimony).

The appellant's attorney submitted into evidence a February 16, 2023 progress note about the appellant from Alvaro Pascual-Leone, M.D., a neurologist at the [REDACTED] in [REDACTED], which states in relevant part:

[The appellant] has microangiopathic cerebrovascular disease and a progressive cognitive decline, with impact on activities of daily living (ADLs) and instrumental activities of daily living (IADLs) establishing a diagnosis of dementia. Her symptoms include episodes of confusion, a tendency for echolalia, impulse control programs, hallucinations, prominent fluctuations, and motor difficulties. Given the symptoms, a clinical high suspicion of diffuse Lewy body disease in addition to the cerebrovascular disease was established, leading to a diagnosis of mixed dementia. However a DAT scan yielded unclear results without definite evidence of neurodegenerative parkinsonism. Nonetheless because of the clinical picture we started treatment with Sinemet and there was a clear clinical improvement all by (*sic*) some concerns of possibly worsening confusion and psychosis. . . .

Since the last appointment [the appellant] has continued to live at [REDACTED]. She had been scheduled to go into the PACE program but eventually that was denied. According to the denial of PACE enrollment letter, the rationale for denial included the diagnosis of Alzheimer's disease being a progressive disease, resistance of care, and medication noncompliance. The recommendation was made for long-term care placement in a skilled nursing facility. However as mentioned above it is worth emphasizing the fact that [the appellant's] neurological status was improved with a combination of an acetylcholinesterase inhibitor and a small dose of Sinemet consistent with an underlying Lewy body disease etiology. Resuming Sinemet as planned, and adjusting the dose under appropriate observation, is expected to lead to any

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<sup>3</sup> The January 23, 2023 denial notice also states, "Some PACE alternative options that may meet [the appellant's] care needs and ensure [the appellant's] safety include • Long term care placement in a skilled nursing facility" (Exh. 1).

improvement again since the Sinemet was stopped and she showed a marked worsening because of that. Given that consideration, the expectation is that her clinical status may in fact improve and that with appropriate support she may be able to remain at [REDACTED] while benefiting from the care provided by the PACE program. There is good evidence that [the appellant] is participating and benefiting from group activities and daily programming at [REDACTED]. In addition, living there provides proximity to her son and friends who visit her frequently. While she needs assistance with ADLs, that assistance is provided by staff at [REDACTED], who also ensure compliance with her medications. From a neurological point of view therefore, it seems that being able to continue the benefit of residing at [REDACTED] while having appropriate supportive medical care would be ideal.

(Exh. 8)

The appellant's daughter testified that the appellant receives physical therapy (PT) twice a week at her ALF. The goal is to have the appellant ambulate "somewhat independently;" and specifically, to get the appellant to use her walker, and if she is fatigued, to use her wheelchair. PT also works with the appellant on transfers into and out of bed, and onto and off the toilet. The appellant had a fall at the ALF in early [REDACTED] 2022, was hospitalized and was subsequently admitted to a rehabilitation facility for a couple of weeks. She received PT at the rehabilitation facility, but did not return to her baseline, according to the appellant's daughter (Testimony, Exh. 12).

The appellant was diagnosed with Alzheimer's disease in 2018, although she experienced some cognitive decline well before that time. More recently, her neurologist raised the possibility that the appellant may have Lewy body dementia. The appellant had Covid-19 at Christmas in 2020, according to the appellant's daughter. In January, 2021, the appellant received the Covid-19 vaccine, and a day later she could not stand up. She was hospitalized and subsequently admitted to a rehabilitation facility. She had a fall in [REDACTED] 2021, after which she was admitted to a rehabilitation facility again. On several occasions, physical therapists have taken the appellant on as a patient after falls, but quickly discharged her because they believed the appellant was unable to work with them and to make gains. The appellant's daughter, at least once, was able to convince a physical therapist to take the appellant on as a patient again after the physical therapist discharged the appellant (Testimony).

Currently, the appellant receives PT from a Boston company, Maximize Your Mobility. According to the appellant's daughter, the current physical therapist, J.L., states that the appellant is making gains (Testimony, Exh. 9B).

The appellant's daughter testified that in the past, the appellant was considered an elopement risk. She testified also that Ms. Ortiz, the PACE membership nurse, told the appellant's daughter that the appellant would be accepted by PACE. No one apprised the appellant's daughter that there was a

possibility the appellant would not be deemed clinically eligible for PACE (Testimony).<sup>4</sup>

Ms. Ortiz explained that she completes a MDS-HC for all PACE applicants, but even if an applicant meets the criteria on the MDS-HC, there is another level of review by the IDT that must occur for clinical eligibility to be approved. Dr. Hardy, the PACE medical director, stated that the MDS-HC measures whether an applicant requires a nursing-facility level of care, one of the prerequisites for admission. The results of the MDS-HC are not necessarily shared with the applicant and/or his or her family members (Testimony).

The appellant's attorney stated that the appellant's daughter did not understand that the [REDACTED] 2023 evaluation at the ALF was actually a second PACE clinical assessment of the appellant, at the request of the PACE IDT. The appellant's daughter stated that she believed this meeting between the ALF nurse and the PACE home care nurse was just an "informal" discussion about all PACE residents at the ALF. The appellant's daughter stated she believed the appellant would be accepted to PACE effective February 1, 2023. She added that between the PACE assessments on [REDACTED] 2022 and [REDACTED] 2023, respectively, no one expressed to her that the appellant might not be clinically eligible for enrollment (Testimony).<sup>5</sup>

The appellant's daughter testified that the appellant can feed herself at times, although sometimes an aide will sit with the appellant to cue her to eat. The appellant's appetite has declined. The appellant wears pull-ups for bowel and bladder incontinence. She is typically not able to toilet herself (Testimony, Exh. 7).

The appellant's daughter stated that she believes the appellant derives benefits from living at the ALF. She participates in art and music therapy activities there, and the appellant's caregivers know her well. The ALF has never apprised the appellant's daughter that they are unable to safely care for her. The appellant's daughter has not yet explored long-term care facilities for the appellant (Testimony).

The appellant's attorney submitted into evidence a copy of a March 13, 2023 letter from N.J.M., the executive director of the ALF. The letter reads in pertinent part:

[The appellant] has been a resident at [REDACTED] since [REDACTED] of 2018. Although she has had a few setbacks over the last couple of years, she has been able to return to her physical baseline with continued support through physical therapy, as well as her continued participations in her daily routines here. . . [The appellant] participates in our enrichment programming activities as well as utilizing our internal care options for added support.

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<sup>4</sup> In a Timeline of Key Dates document prepared by the appellant's daughter (Exh. 12, pp. 9-12), she documented that on 12/19/22, "L.S. [PACE representative] informed me that [the appellant] would not be accepted by PACE for 1/1/2023, but that she would be accepted for 2/1/2023."

<sup>5</sup> Ms. Azar acknowledged that communication between the PACE representatives and the appellant's daughter, during the period November, 2022 through January, 2023, "could have been better."

As per your mention of the conversation that took place on 1/19/2023, you are correct that during this conversation all PACE residents, including [the appellant] who was approved via letter date 1/3/2023, were discussed. The extent of [the appellant's] service plan was discussed with the understanding that she had recently returned from a rehab stay and would require some additional assistance from the [REDACTED] team. During this intake with the PACE nurse, it was discussed that [the appellant] would require more hands-on assistance from PACE while also benefitting from physical therapy through a VNA vendor in order to return to her prior level of functioning.

Resident's (*sic*) residing in a memory supportive neighborhood may require additional supports. Here at the [REDACTED] we are able to make certain adjustments to best meet the needs of all our residents. This can include at times adjusting our delivery mode of medications to our residents by transitioning from SAMM (self-administered medication management) to LMA (nurse-administered medication management). In addition, the appellant receives meal supervision and physical assisted ADL supports from our dedicated nursing assistants in order to maintain her preferred quality of life.

[REDACTED] is certified as a non-clinical setting and therefore I cannot maintain documentation of historical clinical data to forecast what [the appellant's] progress will look like as an outcome of VNA support nor our in-house care options. I can share that [the appellant] does remain safe and cared for here at the [REDACTED] and continues to attend our enriched life programming as part of her daily routine. . .

(Exh. 9A)

The appellant's daughter testified that a new psychiatrist who worked with the appellant in December, 2022 recommended that the appellant's dosage of Sinemet be discontinued, since side effects of this drug may include inhibition of impulse control, and possible psychosis. The appellant's daughter testified that she believed this medication was helping the appellant. However, she acceded to the psychiatrist's recommendation to discontinue the medication, with the understanding that the appellant would be working with a PACE psychiatrist (and an IDT) beginning on February 1, 2023. Had she known that the appellant would not be approved clinically for PACE, she would have advocated to keep the appellant on Sinemet. The appellant's daughter testified that the appellant's condition declined once Sinemet was discontinued (Testimony).

Ms. Azar pointed out that a recent progress note of the appellant's physical therapist, J.L., for a session on March 9, 2023 documents the following:

Taught/instructed regarding safety including 24-hour supervision, assist for all mobility, providing proper cues, allowing [the appellant] increased time to respond, keeping cues clear, concise and simple, and allowing [the appellant] to help as much as possible.

(Exh. 13, p. 99)



Ms. Azar asserted that this progress note is consistent with the findings about the appellant made by the Harbor Health IDT, including that the appellant needs 24-hour supervision (Testimony).

The same progress note of the physical therapist, dated March 9, 2023, states the following under “Assessment/Diagnosis:”

[Appellant] seen for PT session including gait training, balance re-ed, ROM bilateral LEs both active and passive with passive stretching in both sitting and supine. Bed mobility training and transfer training performed with min assist to mod assist, depending on [appellant’s] attention and understanding/processing of commands. Her response to simple commands continues to fluctuate, but overall is improved in a quiet environment with few distractions. [Appellant] continues to respond well to music with mobility and gait as it appears to improve her mood and continuation of movement with gait. [Appellant] often singing along with songs that are familiar to her.

Barriers to progress: advanced age, poor STM requires repetition for learning, easily fatigued, LE weakness. . .

(Exh. 13, p. 99)<sup>6</sup>

The appellant’s daughter testified that she believes that with PACE support, the appellant will be able to stay safely on the memory-care unit at the ALF for a longer period of time, thus avoiding the need for admission to a nursing facility (Testimony).

## Findings of Fact

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

1. The appellant is over age 65 and widowed, is enrolled in Medicare, and resides in a locked memory-care unit at an ALF (Testimony, Exh. 7).
2. The appellant’s diagnoses are: major depression; Alzheimer’s dementia; eczema; anxiety; anemia; bilateral lower extremity edema; other abnormalities of gait and mobility; chronic embolism and thrombosis of inferior vena cava; dysphagia, oropharyngeal phase; repeated falls; a history of Covid-19 infection; and spondylopathy in the cervical region (Testimony, Exh. 7, p. 11).
3. The appellant’s health-care-proxy and durable power-of-attorney documents were invoked due to her mental incapacity in May, 2019 (Exh. 6).
4. In November, 2022, the appellant submitted an application for admission to PACE (Program of All-Inclusive Care for the Elderly), administered by Harbor Health

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<sup>6</sup> This progress note also asserts that the appellant’s “rehab potential” is “good” (Exh. 13, p. 99).

(Testimony).

5. On [REDACTED] 2022, a PACE membership nurse assessed the appellant in person at the ALF, and made the following pertinent findings about the appellant: the appellant cannot grasp ideas and interview questions in her primary language (English); the appellant cannot take her medications on her own and has difficulty swallowing her medications; the appellant has both short-term and long-term memory loss; the appellant is incontinent of both bladder and bowel, and has frequent UTIs; the appellant requires physical assistance and cueing when she eats; the appellant had a fall at her ALF in [REDACTED] 2022, resulting in injuries that required medical treatment, and she has had multiple hospitalizations due to falls; the appellant requires physical assistance with all of her instrumental activities of daily living (IADLs); the appellant is oriented to self only, with minimal eye contact and minimal verbal communication; the appellant requires assistance for transfers, she requires total care for bathing, dressing, and toileting, and requires some assistance with eating; and the appellant was confused and disoriented, with impaired judgment (Exh. 7, pp. 3-7).
6. The PACE nurse also completed a MDS-HC assessment of the appellant (Testimony).
7. The Harbor Health IDT subsequently met to consider the results of this in-person assessment, and expressed concern about the level of care the appellant requires. As a result, they asked a PACE home care nurse to make an additional in-home assessment of the appellant; this occurred on [REDACTED] (Testimony).
8. On January 3, 2023, MassHealth issued a written notice of approval for MassHealth eligibility to the appellant, pertaining to her financial and categorical eligibility (Exh. 11).
9. At a subsequent in-person assessment by a PACE home care nurse on [REDACTED], she documented in a nurses note that the appellant has been residing on a locked memory-care unit at her ALF since 2019, with staff available 24 hours per day. On the date in question, the appellant was seated in a wheelchair. An ALF nurse was present at the assessment, and the nurse reported that the appellant is able to ambulate with a walker, but sometimes refuses to do so. On those occasions, when the ALF aides try to get the appellant into a wheelchair, she is sometimes resistive (Exh. 7, p. 11).
10. The PACE home care nurse also documented, on [REDACTED], that sometimes when the appellant's medications are handed to her, she pools them in her cheeks. The nurse also documented that the appellant has sessions with physical therapy, but staff reported that they had not seen any improvement. The nurse documented that that the appellant "needs a lot of encouragement to ambulate otherwise she will just sit in her chair." The ALF nurse also reported to the home care nurse that the appellant is "taking up all our staff's time" (*Id.*).
11. The home care nurse's assessment was presented to the Harbor Health clinical enrollment team, which concluded that even with PACE supports, the safety of the appellant could not be maintained in the community; as a result, the clinical enrollment team recommended a

denial of clinical enrollment (Testimony, Exh. 7).

12. The clinical enrollment team forwarded this decision to Harbor Health's director of ESP membership retention and director of quality and compliance, for review, and they agreed with this determination (Testimony).
13. On January 23, 2023, Harbor Health informed the appellant via written notice to her daughter/attorney-in-fact that it had determined that the appellant is unable to live safely in a community setting, and it therefore had denied her enrollment in PACE (Exh. 1).
14. The January 23, 2023 denial notice also states, "Some PACE alternative options that may meet [the appellant's] care needs and ensure [the appellant's] safety include • Long term care placement in a skilled nursing facility" (Exh. 1).
15. The appellant, through her daughter/attorney-in-fact and her attorney, filed a timely appeal of this denial with the BOH on February 7, 2023 (Exh. 2).
16. At her ALF, the appellant receives PT from a Boston company, Maximize Your Mobility, two days per week (Exh. 9, Exh. 13).
17. The goal of PT is to have the appellant ambulate "somewhat independently;" and specifically, to get the appellant to use her walker, and if she is fatigued, to use her wheelchair (Testimony).
18. PT also works with the appellant on transfers into and out of bed, and onto and off the toilet (*Id.*).
19. PT progress notes reflect that the appellant has made modest gains (Exh. 9, Exh. 13).
20. A February 16, 2023 progress note about the appellant from Alvaro Pascual-Leone, M.D., a neurologist at the Wolk Center for Memory Health, states in relevant part: "[The appellant] has microangiopathic cerebrovascular disease and a progressive cognitive decline, with impact on activities of daily living (ADLs) and instrumental activities of daily living (IADLs) establishing a diagnosis of dementia. Her symptoms include episodes of confusion, a tendency for echolalia, impulse control programs, hallucinations, prominent fluctuations, and motor difficulties. Given the symptoms, a clinical high suspicion of diffuse Lewy body disease in addition to the cerebrovascular disease was established, leading to a diagnosis of mixed dementia. . . ." (Exh. 8).
21. Dr. Pascual-Leone prescribed Sinemet for the appellant in 2022, and she showed some improvement in her symptoms (Testimony, Exh. 8, Exh. 12).
22. A psychiatrist later recommended discontinuance of Sinemet for the appellant, due to potential side effects such as inhibition of impulse control and psychosis (Testimony, Exh. 12).

23. The appellant needs cueing to eat, and is incontinent of bowel and bladder (Exh. 7, p. 4, Testimony).
24. Since January, 2021, the appellant has had at least three falls at the ALF, necessitating hospitalizations followed by rehabilitation facility stays (Testimony, Exh. 12).
25. Since her most recent rehabilitation facility stay, in October, 2022, the appellant has not returned to her baseline (Testimony).
26. The appellant's ALF believes it can continue to safely care for the appellant (Testimony, Exh. 9A).
27. Between November, 2022 and January, 2023, no one apprised the appellant's daughter that there was a possibility the appellant would not be deemed clinically eligible for PACE (Testimony).
28. The appellant's daughter has not yet explored long-term care facility admissions for the appellant (Testimony).

## **Analysis and Conclusions of Law**

MassHealth regulations at 130 CMR 519.007(C), "Individuals Who Would be Institutionalized," states as follows:

(C) Program of All-Inclusive Care for the Elderly (PACE).

(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*.

Harbor Health administers PACE on behalf of MassHealth, and is MassHealth's agent. As such, Harbor Health is required to follow MassHealth laws and regulations, as well as federal laws and regulations governing PACE.

Pursuant to 130 CMR 450.204, the MassHealth All Provider Manuals, MassHealth 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 MassHealth.** Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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)

Pursuant to 42 Code of Federal Regulations (CFR) § 460.4, applicable to "Programs of All-Inclusive Care for the Elderly:"

Scope and purpose.

- (a) *General*. This part sets forth the following:

- (1) The requirements that an entity must meet to be approved as a PACE organization that operates a PACE program under Medicare and Medicaid.
- (2) How individuals may qualify to enroll in a PACE program.
- (3) How Medicare and Medicaid payments will be made for PACE services.
- (4) Provisions for Federal and State monitoring of PACE programs.
- (5) Procedures for sanctions and terminations.
- (b) *Program purpose.* PACE provides pre-paid, capitated, comprehensive health care services designed to meet the following objectives:
  - (1) Enhance the quality of life and autonomy for frail, older adults.
  - (2) Maximize dignity of, and respect for, older adults.
  - (3) Enable frail, older adults to live in the community as long as medically and socially feasible.**
  - (4) Preserve and support the older adult's family unit.

(Emphasis added)

Next, according to 42 CFR § 460.150, “Eligibility to Enroll in a PACE Program:”

- (a) *General rule.* To enroll in a PACE program, an individual must meet eligibility requirements specified in this section. To continue to be eligible for PACE, an individual must meet the annual recertification requirements specified in § 460.160.
- (b) *Basic eligibility requirements.* To be eligible to enroll in PACE, an individual must meet the following requirements:
  - (1) Be 55 years of age or older.
  - (2) Be determined by the State administering agency to need the level of care required under the State Medicaid plan for coverage of nursing facility services, which indicates that the individual's health status is comparable to the health status of individuals who have participated in the PACE demonstration waiver programs.
  - (3) Reside in the service area of the PACE organization.
  - (4) Meet any additional program specific eligibility conditions imposed under the PACE program agreement. These additional conditions may not modify the requirements of paragraph (b)(1) through (b)(3) of this section.
- (c) *Other eligibility requirements.*
  - (1) At the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety.**
  - (2) The State administering agency criteria used to determine if an individual's health or safety would be jeopardized by living in a community setting must be specified in the program agreement.

...

(Emphasis added)

Moreover, 42 CFR § 460.152, “Enrollment Process,” states as follows:

(a) *Intake process.* Intake is an intensive process during which PACE staff members make one or more visits to a potential participant's place of residence and the potential participant makes one or more visits to the PACE center. At a minimum, the intake process must include the following activities:

(1) The PACE staff must explain to the potential participant and his or her representative or caregiver the following information:

(i) The PACE program, using a copy of the enrollment agreement described in § 460.154, specifically references the elements of the agreement including but not limited to § 460.154(e), (i) through (m), and (r).

(ii) The requirement that the PACE organization would be the participant's sole service provider and clarification that the PACE organization guarantees access to services, but not to a specific provider.

(iii) A list of the employees of the PACE organization who furnish care and the most current list of contracted health care providers under § 460.70(c).

(iv) Monthly premiums, if any.

(v) Any Medicaid spenddown obligations.

(vi) Post-eligibility treatment of income.

(2) The potential participant must sign a release to allow the PACE organization to obtain his or her medical and financial information and eligibility status for Medicare and Medicaid.

(3) The State administering agency must assess the potential participant, including any individual who is not eligible for Medicaid, to ensure that he or she needs the level of care required under the State Medicaid plan for coverage of nursing facility services, which indicates that the individual's health status is comparable to the health status of individuals who have participated in the PACE demonstration waiver programs.

(4) PACE staff must assess the potential participant to ensure that he or she can be cared for appropriately in a community setting and that he or she meets all requirements for PACE eligibility specified in this part.

**(b) *Denial of Enrollment.* If a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting, the PACE organization must meet the following requirements:**

**(1) Notify the individual in writing of the reason for the denial.**

**(2) Refer the individual to alternative services, as appropriate.**

(3) Maintain supporting documentation of the reason for the denial.

(4) Notify CMS and the State administering agency in the form and manner specified by CMS and make the documentation available for review.

...

(Emphasis added)

Here, pursuant to its obligations under federal regulations, Harbor Health (PACE) made two in-person assessments of the appellant at her place of residence, the ALF, to determine if she is able to live in the community without jeopardizing her health or safety. The PACE representatives documented serious concerns they had about the appellant's health and safety at her ALF, including her repeated falls, need for extensive assistance with her ADLs (including eating, transfers and toileting) and IADLs, loss of short-term and long-term memory, incontinence of bowel and bladder, and difficulty communicating. These concerns were raised internally at PACE; they could have, and should have, been raised with the appellant's daughter as well, following the November, 2022 in-person assessment of the appellant.

Because the PACE IDT determined that the appellant could not live safely in the community, they denied the appellant's clinical eligibility for enrollment in PACE via written notice. The appellant's daughter (who is her attorney-in-fact and invoked health care proxy) appears to have been blindsided by this denial, particularly where MassHealth issued a notice that appeared to approve the appellant for PACE enrollment in early January, 2023.

The appellant's daughter argued passionately that the appellant's health and safety can be maintained in the community on the dementia unit of her ALF, where she currently resides and receives extensive support and assistance.

Physical therapy progress notes show that the appellant has made some gains in PT, but continues to "fluctuate" in her ability to process and respond to simple commands. The evidence also shows that since her most recent rehabilitation facility stay, in [REDACTED], 2022, she has not returned to her previous baseline functioning. Apparently, she has responded well to a resumption of the psychiatric medication Sinemet.

Nonetheless, the appellant continues to show resistance to her caregivers, a lack of initiative, and has exhibited difficulties in motor coordination, impulse control, and swallowing. She has experienced hallucinations, confusion and disorientation. She has also shown a tendency to "pool" medications in her cheek instead of swallowing them.

The appellant's neurologist documented a progressive cognitive decline of the appellant, along with a diagnosis of "mixed dementia."

When viewed in its entirety, the record evidence demonstrates that the appellant's infirmities continue to worsen, and that she is increasingly difficult to care for. As reflected in a physical therapy progress note, the appellant essentially requires 24-hour supervision at this time to ensure her health and safety.

It is unfortunate that this clinical impression was not shared with the appellant's family prior to January 23, 2023. Objectively, however, Harbor Health's clinical assessment of the appellant was not inaccurate; to take her on as a PACE participant at this time, while she resides at an ALF, would not guarantee her safety and health for the foreseeable future.



Other than poor communication with the appellant's family, I find no error in Harbor Health's decision to deny the appellant's clinical eligibility for PACE services, and to recommend placement in a long-term care facility.

For all of these reasons, this appeal must be DENIED.

## **Order for Harbor Health**

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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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc:

cc: