

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2302093
<b>Decision Date:</b>	6/16/2023	<b>Hearing Date:</b>	04/20/2023
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



**Appearance for Cambridge Health Alliance (CHA):**


Kathryn Tylander, PT, DPT, Compliance and Quality Manager (the CHA Compliance and Quality Manager or Manager)

Sue Donnelly, Director of Operations (the CHA Director of Operations or Director)



*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 for All-inclusive Care for the Elderly (PACE)
<b>Decision Date:</b>	6/16/2023	<b>Hearing Date:</b>	04/20/2023
<b>CHA's Rep.:</b>	Kathryn Tylander; Sue Donnelly	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center		

### 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 February 23, 2023, Cambridge Health Alliance (CHA - 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.) 1; Ex. 7, p. 55). The appellant filed this appeal in a timely manner on March 15, 2023. (See 130 CMR 610.015(B) and Ex. 2). A denial of services by a PACE provider give grounds for appeal. (See 130 CMR 610.032).

Through a notice dated March 15, 2023, the Board of Hearings informed the appellant that it would dismiss his appeal unless the appellant submitted signed and returned an enclosed form and submitted an entire copy of the notice that he wished to appeal. (Ex. 4). On March 24, 2023, the Board of Hearings received a copy of the March 15 notice and (presumably) the notice under appeal and proceeded to schedule the hearing. (Ex. 5).

### Action Taken by the PACE Provider

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 CHA Compliance and Quality Manager read the following statement from the CHA's hearing submission (Ex. 7, pp. 1-2)<sup>1</sup>:

CHA PACE has denied coverage for continued short-term skilled nursing care. CHA PACE recommends [the appellant] receive care at a long term level.

Contents:

CHA PACE Enrollment Agreement: [Ex. 7, pp. 3-39]

Note: PACE is a unique model of care and a managed Medicare & Medicaid replacement program. Interdisciplinary Team members make clinical judgments based on each case and can flex benefits, but do utilize the basic Medicare & Medicaid guidance as well as MassHealth regulations. The PACE Enrollment agreement states: "If you are a MassHealth member and it is determined by your interdisciplinary team that you require short term nursing facility placement (up to 6 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." "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 costs of nursing facility care." [Ex. 7, p. 18].

[The appellant] has demonstrated a reliance on the nursing facility as [his] primary residence. He has been a resident in a short term rehabilitation setting since [REDACTED]. If [the appellant] is still in a facility at the time of the hearing, he will have spent 164 days in short term rehab. [The appellant] is unable to return to his previous community residence and is relying on a nursing facility for his living situation, as such, he should be required to share costs.

Initial Denial of Service Request: [Ex. 7, pp. 40-41]

Note: Denial based on evaluation of the occupational therapist and social worker who note the participant is unable to return to his previous apartment as there are stairs to and from the apartment and to and from the bathroom. The participant requires a wheelchair for mobility, so the stairs to his apartment make the living

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<sup>1</sup> The hearing officer has edited this statement to remove personal names, correct minor errors, and make sure the references correspond to the hearing record.

situation unsafe.

Internal Standard Appeal Process: [Ex. 7, p. 55]

Note: Participant's appeal was reviewed by [the] Associate Chief, Care Management at [CHA]. Based on a review of the participant's medical record and a statement provided by the participant ([Ex. 7, pp. 46-54]), [the Associate Chief] upheld the denial and recommended a transition to long term care. [The Associate Chief]'s rationale for this decision is due to the participant receiving 3 months of skilled rehabilitation services with a lack of substantial progress in his mobility or ability to perform his activities of daily living.

Scholarly Article outlining length of stay outcomes for the over 65 Medicaid population use: [Ex. 7, pp. 61-85]

Note: Individuals requiring more than 90 days of skilled nursing care are far less likely to return to the community than individuals requiring less than 90 days of care. Additionally, individuals with mobility issues and co morbidities similar to [the appellant's] use nursing homes as their primary residence.

MassHealth Eligibility Operations Memo 20-21: [Ex. 7, pp. 86-89]

Note: MassHealth does not allow for home maintenance needs after 6 months, regardless of the prognosis to return to home at that time.

Medicare's Skilled Nursing Facility Benefit: [Ex. 7, pp. 90-92]

Note: PACE programs do not have a formulary (nor are they allowed to), however this benefit outline defines standard medical practice in relation to the provision of short term skilled nursing care. It notes a limit of coverage of 100 days.

PACE Regulations for Coverage including Service Determination Request and Appeal Policies: [Ex. 7, pp. 93-99]

Note: "Decisions by the interdisciplinary team to provide or deny services under paragraph (a) of this section must be based on an evaluation of the participant that takes into account:" "Current clinical practice guidelines and professional standards of care applicable to the particular services." ([Ex. 7, pp. 93-94])

The appellant confirmed that he has been in his current facility since [REDACTED]. The appellant also confirmed that he is reliant on a wheelchair for mobility currently. Finally, the appellant verified that his current apartment is not on the first floor and that the apartment building containing it does not have an elevator or lift. The appellant's friend testified that he and the appellant have requested that the appellant be permitted to move to the first floor. The apartment owner informed them that such a move would be okay with them but that the appellant would need to sign some papers.

The appellant stated that he does have a problem with moving out of the rehabilitation facility currently. The appellant recently contracted COVID and was hospitalized. He has no strength.

in that he is trying to extend his therapy. The appellant is able to transfer from his bed to his wheelchair sloppily. The appellant needs assistance with the bathroom. The appellant stated that this has put him way behind in his progress. The appellant wanted to extend his therapy for three to six weeks to get back to the level of improvement he had achieved prior to COVID. The appellant's friend stated that the appellant will have his support in trying to return to the community. The only thing keeping him back is getting a more accessible room.

The Manager stated that the PACE provider was aware of the appellant's living situation in the community. She stated that even if the appellant began leasing a unit on the first floor of his apartment building, there are stairs into the building. Also, the bedroom on the first floor of the building is not large enough to accommodate the appellant's wheelchair. The PACE provider also had concerns because promised renovations have not come to fruition. The property manager has not given any indication that there is a spot that would meet the appellant's needs given his physical condition.

The appellant's friend stated that the property manager told them that the appellant could move to a different unit. The appellant's friend stated that renovations aside, the property manager also informed them that the appellant would have a unit waiting for him when he was discharged from rehabilitation. The Manager responded stating that having a community living space was only part of the consideration. She pointed out that since November the appellant has relied on the nursing facility for housing, and he had a clinically demonstrated need to live there. A typical residence would not be acceptable because he would not be able to access medical care while living there unlike in a nursing facility. Additionally, the appellant's current apartment is not accessible because of the stairs.

The appellant stated that the PACE provider's position was that he would not be able to attend appointments because it would be impossible for the appellant to use his wheelchair on stairs. The appellant stated that he was able to ambulate with the assistance of a walker, though he could not do so currently because he lost his strength due to COVID. The appellant is able to use a portable toilet. The appellant believed that, as long as he was able to use a walker, he would be able to use his apartment. The appellant stated that he has practiced his transfers, and that his physical therapist informed him that he would be back to his pre-COVID condition in three to six weeks.

The Director stated that the reality of what the appellant was experiencing is what the PACE provider has seen. The concern was that the setbacks the appellant has experienced in a supported setting was that the appellant experiencing mild or more significant illness resulted in a setback. The appellant has been able to receive support in the facility which has made his recovery easier. In a home setting, the PACE provider would not be able to actively assist the appellant. The appellant would not have the layers of support he has now that would be able to quickly support him if he had another illness. This could put the appellant into an unsafe situation.

The appellant concluded by again stating he wanted a three to six week extension of his short term care and that he did not want to go into long term care.

## Findings of Fact

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

1. PACE is a unique model of care and a managed Medicare and Medicaid replacement program. (Testimony of Manager; Ex. 7, pp. 3-39).
2. Interdisciplinary Team 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. (Testimony of Manager; Ex. 7, pp. 3-39).
3. The PACE Enrollment agreement states: "If you are a MassHealth member and it is determined by your interdisciplinary team that you require short term nursing facility placement (up to 6 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...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 costs of nursing facility care." (Ex. 7, p. 18).
4. The appellant began residing in a short term rehabilitation setting on [REDACTED] (Testimony of Manager).
5. The appellant requested coverage for continued short-term skilled nursing care. (Testimony of the appellant).
6. The PACE provider denied the request based on the evaluation of an occupational therapist and social worker who noted that the appellant was unable to return to his previous apartment because there were stairs to and from the apartment and to and from his bathroom and the appellant required a wheelchair for mobility. (Testimony of the Manager; Testimony of the Director).
7. The appellant's denial was reviewed by the PACE provider's Associate Chief, Care Management.
8. Based on a review of the appellant's medical record and a statement provided by the participant, the Associate Chief upheld the denial and recommended a transition to long term care because at that point the appellant had received three months of skilled rehabilitation services with a lack of substantial progress in his mobility or ability to perform his activities of daily living. (Ex. 7, pp. 46-54).

9. As of the date of the hearing, the appellant has spent 164 days in short term rehabilitation. (Testimony of the Manager).
10. The appellant has, with the assistance of his friend, attempted to lease an apartment on the first floor of the building he was living in in the community. (Testimony of the appellant; Testimony of the appellant's friend).
11. The appellant has undergone a set back after having COVID-19 and requires three to six weeks further short-term rehabilitation. (Testimony of the appellant).

## **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 been in short-term rehabilitation since November 8, 2022. This means that, as of the date of the hearing, the appellant has been in the rehabilitation setting for 164 days. The PACE provider denied an extension of the appellant's short-term rehabilitation and recommended that the appellant receive long-term nursing facility service moving forward. Therefore, the appellant would no longer be able to live in the community. Although the appellant clearly would like to live in the community, and not in a long-term care facility, 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 his continued ability to live in the community. The decision to

deny continued short-term care was entirely proper under the rules for PACE.<sup>2</sup>

For the foregoing reasons, the appeal is DENIED.

## **Order for the PACE provider**

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>2</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 a statement of the appellant's rights under the regulations and should not be construed as encouragement or discouragement of any particular action by the appellant.