

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302378
Decision Date:	5/19/2023	Hearing Date:	04/26/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearances for Element Care/PACE:
Carla Recinos; Natalie Newfeld – OT; Anna Miretsky – PT; Briana Fortado – Social Worker; Glenn Gordeau – RN; Dr. Vivian Chan; Priscilla Masterson – Psych. Clinical Nurse; Danielle McKnight – Cumming Center Manager



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Program for All Inclusive Care for the Elderly (PACE)
Decision Date:	5/19/2023	Hearing Date:	04/26/2023
PACE's Rep.:	Carla Recinos; Natalie Newfeld, OT; Anna Miretsky, PT; Briana Fortado, LCSW; Glenn Gordeau, RN; Dr. Vivian Chan; Priscilla Masterson, RN; Danielle McKnight	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated March 17, 2023, Element Care, a Program of All-Inclusive Care for the Elderly ("PACE") plan, denied the appellant's internal appeal for coverage of a powered wheelchair. (Exhibit 2.) The appellant filed this appeal in a timely manner on March 23, 2023. (Exhibit 2; 130 CMR 610.015(B).) 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 CFR § 460.124).

Action Taken by Element Care

Element Care denied the appellant's request for a powered wheelchair because it determined that he could not safely use one independently.

Issue

Did Element Care properly deny the appellant's request for a powered wheelchair.

Summary of Evidence

The appellant is enrolled in the Program of All-Inclusive Care for the Elderly ("PACE") program with Element Care and has been for several years. On or around February 1, 2023, the appellant requested a powered wheelchair. On February 2, 2023, a physical therapist and occupational therapist assessed the appellant. The interdisciplinary team denied the appellant's request on February 3, 2023, and the appellant filed an internal appeal. The internal review board upheld the denial through the appealed March 17, 2023 notice.

The appellant's relevant past medical history includes macular degeneration (vision loss), knee laceration, type 2 diabetes with two related toe amputations, neuropathy, osteoarthritis, and vascular disease. The appellant is independent with in-home ambulation and mobility, though he sometimes "cruises" furniture or uses a platform cane. He is also able to walk up to 150 feet with a cane or walker. Outside, he uses a manual wheelchair, powered by pushing with his feet up to 500 feet. The appellant has prescribed specialty footwear to protect his feet from further injury, but he is non-compliant with wearing them. The appellant testified that the footwear is uncomfortable, but he has not sought to have them adjusted.

The purpose of the request for the power mobility device was to increase independence in the community. The appellant expects to use the power wheelchair to get from his apartment to a store about two blocks away. The appellant's apartment is too crowded to use his wheelchair in his home; he stores his manual wheelchair in the hallway outside his apartment.¹ The appellant does have companion services that provide occasional transportation to a store to do necessary shopping. The appellant sometimes uses a store scooter to get around a store, but he is not comfortable using one in crowded stores due to his vision. The appellant has purchased a tricycle to assist with getting out into the community, he testified that he was planning to affix a motor to it but for now it has been too expensive.

The PACE representatives explained that the appellant was given a motor-free visual perception test ("MFVPT"). This is a test used by the Registry of Motor Vehicles to assess individuals with macular degeneration. The appellant's general vision was at the lower end of average for people his age. Based upon his peripheral vision and vision acuity, he is 'cleared' to drive. However, the appellant failed two components of the MFVPT dealing with depth perception. He has a very difficult time differentiating objects on the ground from the ground itself. The PACE

¹ The appellant agreed that his home is currently too crowded for a wheelchair. He argued he would clear it out if he was approved. The PACE representatives testified that they had offered to help him clear the clutter, but he refused.

representatives testified that their primary concern for the appellant, other than hitting someone with the powered wheelchair, would be accidentally driving it off of a curb that he could not see because he cannot distinguish depth on the ground. They testified that they had redirected the appellant twice outdoors in order to keep him safely on a sidewalk and angled safely down a curb-cut. They clarified that the RMV uses the MFVPT to flag individuals for a driving test to determine whether they should be allowed to drive. That was what this real-world assessment was meant to imitate, and they felt the appellant failed the real-world assessment.

The appellant and the social worker from the PACE objected to the conditions of the real-world assessment. The appellant testified that the wheelchair he was tested on used a right-handed joystick, and his right hand does not function fully. Therefore, his control of the wheelchair was impeded by a physical limitation that would not exist if he received a wheelchair with a left-hand control. He also did not have eyeglasses while operating the wheelchair. He does not usually wear glasses, but he would get them. Finally, he argued that his eye doctors wrote that he “has adequate vision to operate motorized wheelchair,” and “OK to use motorized wheelchair.” (Exhibit 3, pp. 5, 10.) The PACE representatives agreed that the appellant was ‘cleared’ to drive, but there is no recommendation that he drive.

The appellant argued that he needs this powered mobility device for quality of life. Several members of the interdisciplinary team agreed that such a device would greatly increase the appellant’s independence and quality of life. They explained each member of the interdisciplinary team weighs in with their opinion, but then have to agree on a recommendation based upon the totality of the appellant’s circumstances. The physical and occupational therapists were the most outspoken in their belief that the appellant was not safe to operate the powered mobility device, and their assessments regarding safety outweighed the countervailing benefits.

The appellant felt that this decision really came down to money, and he was disappointed with this decision.

Findings of Fact

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

1. The appellant has been enrolled in Element Care’s PACE program for several years. He has macular degeneration, knee laceration, type 2 diabetes with two related toe amputations, neuropathy, osteoarthritis, and vascular disease. (Testimony by PACE representatives.)
2. The appellant has difficulty ambulating, but he is independent with mobility up to 150 feet with a cane or walker, and he can operate a manual wheelchair up to 500 feet. The appellant is prescribed hard footwear to protect his feet, but he does not wear them. (Testimony by PACE representatives.)

3. The purpose for the requested powered mobility device is to improve the appellant's independence in the community. It would be used outside of the home to get to stores and around the neighborhood. (Testimony by the appellant.)
4. The powered mobility device could not be used inside the appellant's home due to cluttering. The appellant has been offered assistance with removing the obstructions, but he has declined. (Testimony by PACE representatives.)
5. The interdisciplinary team performed an assessment on the appellant following his request. This assessment included a MFVPT, and after the appellant failed two components, he was given a driving test in a powered wheelchair. The physical and occupational therapists felt that he was unsafe to operate a powered mobility device due to his poor depth perception and awareness. In discussion with the interdisciplinary team, this safety concern overruled the benefits gained by the appellant's independence. (Testimony by the PACE representatives.)
6. The appellant's eye doctors opined that he "has adequate vision to operate motorized wheelchair," and is "OK to use motorized wheelchair." (Exhibit 3, pp. 5, 10.)
7. The appellant's driving test of the powered mobility device was negatively impacted by the need to use a right-handed joystick when he has limited use of his right hand. (Testimony by the appellant and PACE representatives.)

Analysis and Conclusions of Law

The Programs of All-Inclusive Care for the Elderly is one of several Medicaid waiver programs that allow 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, 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 <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pace111c01.pdf> (last visited May 12, 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 condition as to amount, duration or scope of services and there are no deductibles, copayments, coinsurance, or other cost sharing that would otherwise apply under Medicare or Medicaid. The IDT assesses the participant's needs and develops a comprehensive care plan that meets the needs of its participants across all care settings on a 24 hour basis, each day of the year.

(PACE Manual at § 30.3; see also 42 USC § 1395eee.)

A PACE “benefit package for all participants” must include access to all Medicare- and Medicaid-covered services and may also include “[o]ther services determined necessary by the interdisciplinary team to improve and maintain the participant’s overall health status.” (42 CFR 460.92(a) (Jan. 19, 2021).) A PACE organization must “[e]stablish an interdisciplinary team ... at each PACE center to comprehensively assess and meet the individual needs of each participant.” (42 CFR § 460.102(a)(1) (Mar. 22, 2021).) This interdisciplinary team must be comprised of at least 11 different participants representing various caregiver roles. (See 42 CFR § 460.102(b)(1)-(11).)

The interdisciplinary team is responsible for assessing and meeting the member’s individual needs. (42 CFR § 460.102(a)(1).) However, the interdisciplinary team has wide latitude regarding medical decision-making, so long as decisions are based upon “all relevant information ... including findings and results of any reassessments required” when a specific service is requested. (42 CFR § 460.121(g); see also 42 CFR § 460.92(b).) These decisions and the recommendations underlying them must be thoroughly documented. (42 CFR § 460.210(b).)

MassHealth’s regulations do not provide additional guidance regarding how an IDT is to review a participant’s request for services or how an IDT’s decision should be reviewed. (See 130 CMR 519.007(C).) Both Medicare and MassHealth only cover powered mobility systems “that can be appropriately used in the member’s home” (See 130 CMR 409.413(A); 42 CFR § 410.38(c)(6).)

Element Care had a duly constituted interdisciplinary team evaluate the appellant’s request. He was specifically assessed in response to his request, and the interdisciplinary team ultimately decided that the appellant was unsafe to operate the requested powered mobility device. There are no procedural deficiencies with how this decision was made. Furthermore, there is nothing in Medicare or Medicaid coverage criteria that would warrant overruling the PACE’s decision. If the appellant were covered directly by Medicare and MassHealth, his request would be denied because the appellant does not plan to use the powered mobility device inside his home, and he could not due to clutter in the home. (See 130 CMR 409.413(A); 42 CFR § 410.38(c)(6).) Therefore, the appellant’s only eligibility for the device is due to the expanded benefits made available by his participation in the PACE. The appellant submitted evidence that supports that he could safely operate a powered mobility device, but this information was available to the interdisciplinary team when they made their decision. The submitted evidence does not convince me that the interdisciplinary team acted arbitrarily or capriciously in denying the appellant’s request. Indeed, they had substantial grounds for concern despite the appellant’s evidence. Therefore, this appeal is DENIED.

Order for 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: PACE Representative: Element Care, Attn: Carla Recinos, 37 Friend Street, Lynn, MA 01902