

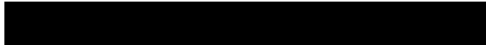
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2401913
Decision Date:	05/17/2024	Hearing Date:	02/29/2024
Hearing Officer:	Kenneth Brodzinski	Record Open to:	03/20/2024

Appearance for Appellant:



Appearances for MassHealth:

Pamela Azar; Richard Kalish, MD; Claudia Marquez, NP; Christian Bartletta, PNP; Catherine Gallagher; and Karen Mackie, RN

Interpreter:



*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 Disenrollment
Decision Date:	05/17/2024	Hearing Date:	02/29/2024
MassHealth's Rep.:	Pamela Azar	Appellant's Rep.:	Pro se
Hearing Location:	Quincy	Aid Pending:	Yes

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 January 29, 2024, MassHealth's agent, Harbor Health (Harbor) issued a 30-day notice of intent to involuntarily disenroll Appellant from its community PACE program (Exhibit A). Appellant filed for this appeal in a timely manner on February 2, 2024 (see 130 CMR 610.015(B) and Exhibit A). Involuntarily disenrollment constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth's agent, Harbor Health (Harbor) issued a 30-day notice of intent to involuntarily disenroll Appellant from its community PACE program.

Issue

The appeal issue is whether MassHealth's agent, Harbor Health (Harbor) properly applied the controlling regulation(s) to accurate facts when it issued a 30-day notice of intent to involuntarily disenroll Appellant from its community PACE program.

Summary of Evidence

Both parties appeared by telephone. Harbor submitted a packet of documents (Exhibit B). Appellant made no submission other than her Request for Hearing (Exhibit A).

The Harbor representatives testified that Harbor obtained EOHHS approval on 1/30/2024 to issue an involuntary disenrollment notice to Appellant for non-compliance (Exhibit B, pages 1-4 emails between Harbor and SAA account rep [REDACTED]). The approved notice (Exhibit B, pages 5-8) cited PACE regulation 42 CFR § 460.164 (b) (e), a PACE program participant may be involuntarily disenrolled from the PACE program if the PACE organization determines that the participant's behavior jeopardizes his or her health or safety, or a participant with decision-making capacity consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement. The Harbor representatives proceeded to document and explain examples of Appellant's noncompliant behaviors including repeated failure to follow medical advice and repeated failure to keep appointments. These examples include, but are not limited to the following:

Appellant does not follow her recommended care plan or the medical advice from her care team (Exhibit B, pages 9-10); Appellant has violated her behavioral agreement (Exhibit B, pages 11-16); Harbor has recommended that Appellant have on-going psychotherapy following her most recent suicide attempt. Per Appellant's preference for a Spanish-speaking therapist, Harbor scheduled an intake appointment at [REDACTED] 3 times and Appellant has missed her scheduled appointment 3 times. To date Appellant has not rescheduled this appointment and on 1/26/2024 Appellant told her social worker she wanted to wait until the end of February to reschedule this appointment (Exhibit B, pages 17-21); Appellant did not attend her 12/1/2023, 12/8/2023, 12/20/2023 or 1/25/2024 scheduled Telehealth appointments with her PACE psychiatric nurse practitioner (Exhibit B, pages 22-25); and Appellant also missed visits on 2/1 and 2/6 (Exhibit B, pages 26-28).

Harbor mailed the subject notice of involuntary disenrollment to Appellant on 1/30/24 (Exhibit B, page 29) and a joint telephone call by Harbor staff was attempted to give verbal notice on 1/30/24. Appellant did not answer and a voicemail was left requesting a call back; Appellant did not return call (Exhibit B, page 30). Notice was hand delivered to Appellant by a home care nurse and a social worker during a 1/31/2024 home visit. The letter was read to and reviewed with Appellant and appeal rights were explained. Harbor staff assisted Appellant with filing an appeal and attempted to reach Appellant to review involuntary disenrollment, appeal process and answer questions. Harbor staff attempted to reach Appellant using all numbers on record on 1/30, 2/2, and 2/12. On each attempt, voice mail was left requesting a call back; Appellant never called back (Exhibit B, pages 34-36). Harbor staff coordinated with Appellant's PCP to have Appellant call Harbor while Appellant was attending an appointment with her PCP on 2/14 and Harbor staff were finally able to speak with Appellant during this appointment (Exhibit B, pages 37-38). An additional call was made on 2/16/2024 to follow up on report by an RN that

Appellant did not understand the subject notice so, it was translated to Spanish and mailed to Appellant (Exhibit B, page 39).

On the morning of 2/28/2024 a Harbor PACE RN and SW made a scheduled home visit and provided Appellant with a copy of records submitted to the BOH via email on the evening of 2/27/2024 in advance of this hearing (Exhibit B, pages 40-41). Harbor staff called to provide support upon receipt of documents but Appellant did not answer (Exhibit B, page 42).

The Harbor representatives testified that since being served with the subject notice of involuntary disenrollment, Appellant has continued to miss medical appointments and has not scheduled prescribed psychotherapy. According to Harbor, Appellant continues to assert that she wishes to remain enrolled in the PACE program, but has yet to make meaningful steps towards compliance and partnership with her care team. Harbor summarized that Appellant has demonstrated persistent non-compliance putting herself at risk since her 1/1/2021 enrollment. Harbor maintains that the 564 pages of records it has filed (Exhibit B) detail 3 years of non-compliance across all disciplines and specialties.

Appellant appeared on her own behalf and proceeded without the aid of a Spanish interpreter. Appellant explained the difficulty she has had with her MRI appointments. Appellant testified that she takes medication that make it difficult for her to wake up early in the morning. Despite this, “they” made the MRI appointments for 6:00 in the morning. Appellant testified that she was outside waiting in the cold for over an hour. Appellant also testified that she missed another MRI because she didn’t have the medicine she needs to alleviate her claustrophobia so she can be inside the MRI machine. Appellant testified that earlier she expressed a desire to leave the PACE program because she felt Harbor was not giving her sufficient attention. Appellant asserted that she was never sent for certain tests and procedures such as a colonoscopy and injections for the pain in her back. Appellant also asserted that the only other appointments she has missed involve [REDACTED] which she does not like. She asked that Harbor find her some other place. Appellant stated that she likes the PACE program, but she doesn’t think they always listen to her.

In response, the Harbor representatives explained that they tried to accommodate Appellant’s preferences as best as they could. Despite being out of network, Harbor negotiated a contract with one of Appellant’s health care providers, but she had to go on a waiting list for the psychotherapy portion from that provider. When there was no movement on the waiting list, Harbor arranged for Appellant to receive psychotherapy at the Arbors, but Appellant refused. After Appellant’s second suicide attempt, Appellant agreed to seek psychotherapy treatment. In order to accommodate Appellant’s desire to be with a Spanish speaking provider, a referral was made with [REDACTED], but Appellant has failed to attend.

Harbor also noted that they scheduled Appellant for open MRI’s due to her claustrophobia and that Appellant does have medication that she can take to alleviate her claustrophobia. Harbor

also testified that Appellant has missed MRIs scheduled in the afternoon as well as those scheduled in the morning. Currently, Shields MRI refuses to schedule Appellant for any imaging because she has missed so many appointments.

Appellant also testified that she is in a lot of pain because of her back and she asked her providers to hold off on her psychotherapy while she concentrates on the physical ailments causing her pain.

The Harbor representatives testified that Appellant's pain is adversely affecting her mental condition which is in turn affecting her ability to get proper treatment for her physical ailments. They noted that Appellant went to the ER three times (ear pain, chest pain and constipation), but each time she left before being seen and treated. Appellant said she did not remember each time, but said once they tried to put her with Covid patients and she did not want to catch Covid. Appellant also explained that she does not want to be treated at [REDACTED] because she has many friends there and she doesn't want them to know about her treatment. When questioned by the hearing officer whether she let Harbor know of this concern, Appellant acknowledged that she did not.

The Harbor representatives stated they had a document detailing many of the appointments that Appellant has missed. The hearing officer directed Harbor to file the document after the hearing with the Board and Appellant. Appellant was given the opportunity to review and submit a written response if she chose to do so.

Appellant's daughter stated that she wasn't aware of this appeal or the issue until she received a copy of the scheduling letter from BOH. The Harbor representatives explained that after Appellant's second suicide attempt, Appellant removed her daughter as her health care proxy, so Harbor could not communicate with the daughter about Appellant's treatment. Appellant then named her daughter as the appeal representative for this appeal, which is why she received a copy of the notice for the appeal.

The parties exchanged additional testimony concerning a variety of other incidents of non-compliance and Harbor's difficulty with working with Appellant. Among these were frequent changes Appellant made between family members who could participate or could not participate in her care as well as the misuse of medications.

Lastly, the Harbor representatives testified that over the past three years they have had multiple meetings with Appellant, prepared care and behavioral agreements and generally tried to work with Appellant to meet her where she is, but Appellant has repeatedly broken her agreements, failed to attend appointments, not answered calls and not returned calls. According to Harbor, Appellant's refusal or failure to work consistently with her PACE care team and her refusal or failure to attend scheduled appointments and not follow medical recommendations places her health, safety and life at risk.

At the conclusion of the hearing, the record was left open to allow Appellant and her daughter to review and file a written response to the documentation that Harbor was to file after the hearing as well as any of the testimony that was presented at hearing. Appellant had until March 15, 2024 to make such a filing with the Board. Harbor was given until March 20, 2024 to review any submission and file a written response.

As of the record close date and the date of this decision, Appellant has made no post-hearing submissions and has not requested additional time to do so.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant enrolled with Harbor's PACE program on 1/1/2021 enrollment.
2. On 1/30/2024 Harbor obtained EOHHS approval to issue an involuntary disenrollment notice to Appellant for non-compliance (Exhibit B, pages 1-4 emails between Harbor and SAA account rep [REDACTED]).
3. Appellant has repeatedly failed to follow her recommended care plan or the medical advice from her care team (Exhibit B, pages 9-10);
4. Appellant has violated her behavioral agreement (Exhibit B, pages 11-16);
5. Per Appellant's preference for a Spanish-speaking therapist, Harbor scheduled an intake appointment for needed psychotherapy at [REDACTED] 3 times and Appellant has missed her scheduled appointment 3 times.
6. To date Appellant has not rescheduled this appointment and on 1/26/2024 Appellant told her social worker she wanted to wait until the end of February to reschedule this appointment (Exhibit B, pages 17-21);
7. Appellant did not attend her telehealth appointments with her PACE psychiatric nurse practitioner on 12/1/2023, 12/8/2023, 12/20/2023, 1/25/2024 2/1/2024 and 2/6/2024 (Exhibit B, pages 22-28).
8. Appellant has a documented history of failing to answer and/or return telephone calls from Harbor (Exhibit B and C).
9. Appellant has a documented history of failing to attend medical appointments (Exhibit B and C).

10. Currently, Shields MRI refuses to schedule Appellant for any imaging because she has missed so many appointments.
11. Appellant's refusal or failure to work consistently with her PACE care team and her refusal or failure to attend scheduled appointments and not follow medical recommendations places her health, safety and life at risk.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). Appellant has not met her burden.

MassHealth regulation 130 CMR 519.007 states in pertinent part:

(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;*
- 2. at home; and*
- 3. in specialty or inpatient settings, if needed.*

The subject action is governed by federal regulation 42 CFR § 460.164(e) Involuntary Disenrollment, which states:

(e) Noncompliant behavior.

(1) A PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others.

(2) For purposes of this section, noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

This record amply demonstrates Appellant's pattern of significant non-compliance with the Harbor PACE program. During the hearing, Appellant was able to explain her reasons for several instances of non-compliance, but she failed to justify many other instances of noncompliance that were discussed during the hearing and documented throughout the records (Exhibit B) and cited in Harbor's post-hearing submission (Exhibit C). The testimony and records evidence a clear and ongoing pattern of multiple missed appointments and failures to engage with Harbor staff when prompted to do so. Appellant was given time after the hearing for her and her representative to go through all of the documentation and file a detailed response, if they wished to. Appellant made no post-hearing response thereby leaving most of the asserted instances of non-compliance unchallenged.

Given that Appellant has a history of past suicide attempts, her non-compliance with her behavioral and mental health care as well as treatment related to her pituitary tumor jeopardizes her health and safety. Accordingly, the subject action is in compliance with the above-cited controlling regulations.

On this record, Appellant has failed to meet her burden of demonstrating that the action of MassHealth's agent, Harbor Health, is invalid as a matter of law and/or fact. For the foregoing reasons, the appeal is DENIED.

Order for MassHealth

Proceed with disenrollment from PACE pursuant to notice of January 29, 2024.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

[REDACTED]

MassHealth Representative: ESP Harbor Health Services, Attn: Pamela M. Azar, MS, OTR/L, ESP
Director of Quality & Compliance, 1135 Morton Street, Mattapan, MA 02126, 774-470-6740