Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2403349
Decision Date:	06/28/2024	**Hearing Dates:**	04/03/2024; 05/07/2024
Hearing Officer:	Marc Tonaszuck	**Record Open to:**	05/31/2024

Appearances for Appellant:

[redacted]

Appearances for MassHealth/Fallon:

Meghan Adie, Tewksbury MEC (04/03/2024 hearing only);
John Shea, Esq., Fallon, Michelle Malkowski, Senior Director of Summit ElderCare; Dr. Jean Jaoude, Vice President and Medical Director of Summit ElderCare (05/07/2024 hearing only).

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:	Approved	**Issue:**	PACE - Eligibility
Decision Date:	06/28/2024	**Hearing Dates:**	04/03/2024; 05/07/2024
MassHealth's Reps.:	Meghan Adie, Tewksbury MEC (04/03/2024 hearing only); John Shea, Esq., Fallon, Michelle Malkowski, Senior Director of Summit ElderCare; Dr. Jean Jaoude, Vice President and Medical Director of Summit ElderCare (05/07/2024 hearing only).	**Appellant's Reps.:**	
Hearing Location:	Quincy Harbor South	**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

On January 26, 2024, MassHealth informed the appellant that it denied her application for community benefits because her income and assets exceed the guidelines for MassHealth benefits (130 CMR 520.002, 520.003, 520.004; Exhibit 1A). The appellant filed a timely appeal on March 5, 2024 (130 CMR 610.015). Denial of benefits is grounds for appeal to the Board of Hearings (BOH) (130 CMR 610.032).

A fair hearing was held on April 3, 2024, at which time the MassHealth representative testified that

the matter was resolved, the appellant's financial information met the eligibility criteria, and she was approved for MassHealth benefits. The appellant withdrew her appeal regarding financial eligibility for MassHealth benefits. She wished to address a Fallon Health denial of enrollment in a Program of All-Inclusive Care for the Elderly (PACE). Because no PACE representative was present, the fair hearing was reconvened so that the appropriate parties would be present to represent the PACE at the hearing (Exhibits 3A and 3B).

On February 1, 2024, Fallon Health ("Fallon Health" or "Fallon"), MassHealth's agent for participants in the 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 Summit ElderCare PACE (Exhibit 1B). The appellant filed this appeal with the BOH in a timely manner on March 5, 2024 (130 CMR 610.015(B); Exhibit 2). A PACE organization's decision to deny enrollment is grounds for appeal to BOH (130 CMR 610.032(B)).[1]

A fair hearing took place before the BOH on May 7, 2024 (Exhibit 3B). At that time, the record remained open until May 24, 2024 for Fallon's response to the appellant's submission (Exhibit 5) and until May 31, 2024 for the appellant's reply (Exhibit 6). Neither party made submissions during the record open period.

Action Taken by Fallon Health

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

Issue

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

Summary of Evidence

Fallon Health was represented at hearing by John Shea, Esq., Michelle Malkowski, Senior Director of Summit ElderCare; Dr. Jean Jaoude, Vice President and Medical Director of Summit ElderCare. The appellant was present at the fair hearing and was assisted by her husband, [redacted], care manager, and [redacted] her attorney. All parties and witnesses appeared via Microsoft

[1] 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;
2. at home; and
3. in specialty or inpatient settings, if needed.

Teams[2]. Exhibits 1-4 were admitted into the hearing record.

Fallon Health submitted a packet into the hearing record (Exhibit 4). Fallon's attorney, Mr. Shea, explained that the relevant federal regulations address the PACE at 42 CFR 460.000 et seq. The purpose of the PACE is to enable frail elder adults to live in the community. He testified that one of the requirements for enrollment in the PACE is for the applicant to be, at the time of enrollment, able to live in a community setting without jeopardizing his or her health or safety. In this case, Fallon determined that the appellant did not meet this requirement and therefore her application for enrollment in the PACE was denied.

As background, in November 2023, the appellant moved from [redacted] to an assisted living facility (ALF) in Massachusetts to be nearer to a daughter who lives in the area. The appellant lives with her husband. She has diagnoses of acute respiratory failure, asthma, CVA, DVT, pulmonary embolism, impaired balance, left radial fracture with ORIF, MS, major depression, pneumonia, mixed incontinence, foot drop right and left foot, and osteoporosis. The appellant is total care with activities of daily living (ADLs) and incontinent care. Her spouse assists aides at ALF with transfers and care. He also manages all instrumental activities of daily living (IADLs).

A pre-enrollment assessment was performed by Fallon at the appellant's home on November 16, 2023. According to pre-enrollment assessment report, the appellant is dependent on her husband for all transfers from bed to wheelchair with a sit/stand device and a two-person assist. They own the device. She is unable to reposition herself in bed, sleeps with wedges. According to the Fallon Health notes, the appellant would benefit from physical therapy/occupational therapy support, no outside services at this time. The appellant does not have a PCP in place at this time due to recent move to Massachusetts. She has a cast on her left wrist due to a recent fracture, not related to a fall, appointment with an orthopedic MD is pending. The appellant is non ambulatory, she needs a sit-stand device with two-person assistance to transfer. She has her own power chair and sit-stand device.

On December 6, 2023, a nurse and a social worker from Fallon again visited the appellant at her home for an intake assessment. At that time the appellant expressed that she was interested in the program for additional support at home to help her avoid long term care placement. She does not currently have any services in place, except those provided by the ALF.

A note by the Fallon social worker, dated December 7, 2023, states

> On 12/7/23 [Fallon] [inter-disciplinary team] IDT met to discuss [the appellant's] health history and the discoveries obtained during the Intake Assessment. IDT agreed that [the appellant] met the clinical criteria for PACE services and seemed to be safe in her current environment. IDT accepted to manage her care and recommended:

[2] Due to technical difficulties on his end, Attorney Shea appeared at the fair hearing telephonically, instead of virtually.

*ALF support services package including ERS and SAMM program.
*Family will provide transportation for MD visit and PACE for ADH.
*PT/OT to assess for hospital bed necessity ([Appellant]has sit and stand device) that husband use 3X/day for toileting.
*Home Care Team flagged for possible additional HHA and ADH after PEE to provide respite to her husband. IDT approved 2-3 days of ADH to take away from additional in-home support.
*Social Service to review possible BH counseling and assist with alternative housing.
Other specialties to assess accordingly upon enrollment. Family contacted who agree to move forward with the enrollment process. On the other hand, [the appellant] reported meeting December 5, 2023 with her new PCP -May Awkal, who will manage her care until enrolling with PACE. Dr. Awkal referred VNA services through Enhabit Home Health who will provide PT/OT two times per week to increase strength and mobility. She will also refer [the appellant] to a Neurologist. Her cast will be removed on December 14, 2023 at NEOS.

On December 11, 2023, the nurse who was part of the assessment contacted the appellant to inform her she "was clinically accepted to the program and that she should expect a call from someone in the GPES department to assist them with the next step in the enrollment process, obtaining financial coverage thru MassHealth."

On January 11, 2024, the appellant reached out to Fallon to confirm approval of her enrollment in the PACE and to request that physical therapy provide recommendations on utilizing the sit/stand device because occasionally one leg is sliding while transferring and recently, they had to call 911 because the appellant's leg "got stuck" during the process.

On January 16, 2024, a Fallon social worker called the appellant and her husband to "update them on her MassHealth approval and proceeding with enrollment." On January 19, 2024, a physical therapist noted that the appellant's spouse reports "he manages the sit to stand lift and ALF staff manage her clothing and peri care. For showers spouse again assists with transfer to rolling shower chair with sit to stand lift and ALF staff do the shower with her. She has a roll-in shower. Spouse reports ALF provides one hour per day of care and with PACE they would get two hours per day of care covered. They recently received a bill from ALF as they were 34 hours over their allotted time. Spouse states his goal is to "get out of the ALF ASAP" because it is a for-profit entity. The spouse expresses that he is burned out caring for [the appellant] and wants more relief."

The physical therapist noted that the appellant has a wound on her left heel and is wearing cushioned heel boot. Spouse dons her left shoe for transfer with sit to stand lift. He has recently put nonslip tape on platform of lift as there was "911" during transfer when her feet came off the platform and she almost fell from lift. Now the husband states he and aide use their feet to keep her feet on platform during transfer. Noted flexor tone upon being lifted in lift and feet

coming off platform. She needs max assistance to reposition feet on platform and continue to monitor and readjust to keep them there. Her husband wheels her in lift into bathroom approximately 25 feet, then in front of toilet. The second person (today OT) lowers pants and brief and the husband lowers her onto toilet. After toileting, he raises her up in lift (again attention to foot position), aide does peri care and brief change, the husband wheels her back into living room and lowers her back into wheelchair (w/c). she can scoot her hips back into w/c with moderate assistance and full tilt. He states she toilets this way usually twice a day, though she should be toileted three times a day. She was incontinent of urine today. She has roho cushion on w/c, bilaterals on back of seat. Bed is standard queen with bed rail on the right side. Th husband uses lift in/out bed as well. The appellant comments that she hopes she could come to day center to relieve her spouse of care 2-3x/wk. This writer has concerns about safety of transfers w/sit to stand lift and likely decline w/MS necessitating use of Hoyer lift. She questioned whether ALF staff are doing more than they should to assist w/transfer using mechanical lift. She drives power w/c independently. The physical therapist notes that she will discuss this with assistant site director and enrollment team.

On January 19, 2024, a rehabilitation request note by a Fallon occupational therapist states that physical therapy/occupational therapy have concerns about safety with transfers w/sit to stand lift due to need for two-person assist required and ALF usually does not allow this level of care. Second concern is the likelihood that the appellant will decline with MS necessitating the use of Hoyer lift. Will discuss with the assistant site director and enrollment team.

On January 25, 2024, the Fallon social worker noted that they spoke with a nurse and three aides who work with the appellant. They stated that toileting task takes 30-45 min. The appellant's spouse manages the lift. They are asked to help keep her feet on the platform because as she is lifting legs go into flexor pattern and tend to come off the platform. They assist with dressing her in bed. They assist transfer supine to sit at edge of bed and then hold her there. She requires maximum assistance (poor sitting balance) while spouse puts harness around her and attaches it to lift. One aide reported she has injured her back trying to hold her foot on platform. The Fallon social worker asked the nurse if the appellant would be allowed to remain living there is she progressed to Hoyer lift. He reached out to ALF executive director and informed Fallon of the following: the only way they could have the Hoyer lift is if their staff did not assist. He would need plan for outside assist for transfers and a backup plan if outside staff was not able to come in. Their staff would not be allowed to assist at all.

On February 1, 2024, Fallon informed the appellant that the interdisciplinary team denied her application to the PACE. "Our team has assessed your current situation and determined that you are unable to live safely in a community setting because of the following reasons: You require a mechanical lift with the assistance of two caregivers capable of safely transferring you in and out of bed and in and out of your wheelchair multiple times daily."

The appellant appeared at the fair hearing and testified with the assistance of her husband, her social worker, and [redacted], her attorney. Attorney [redacted] submitted a legal memorandum prior to the fair hearing (Exhibit 5). At the hearing, Attorney [redacted] argued that the appellant had initially been "screened into the program," and after Fallon "got a second look," it determined that the appellant would be "far too care-intensive and expensive to maintain." He continued that a PACE member's on-going eligibility is not open to question and according to federal regulations at 42 CFR 460.150(c)(1), an initial assessment is binding on a PACE program. He cited to the PACE manual to state that the purpose of the PACE is to continue care in the community and provide "a spectrum of care" to the members. He also argued that the PACE cannot consider what additional care may be required in the future when making an enrollment determination. The Hoyer lift that is cited to by Fallon is a potential future need. Anticipatory future needs, like the Hoyer lift should not be considered. [redacted] asserted that requiring a two-person transfer does not put the appellant in danger in the community (Exhibit 4).

Counsel next argued that subjecting the appellant to continual medical screenings violates the appellant's civil rights against unnecessary institutionalization and to receive services in most integrated setting pursuant to the Americans with Disabilities Act as clarified by the United States Supreme Court in Olmstead v. L.C, 527 U.S. 581 (Exhibit 5).

Appellant and her husband testified that the appellant has a care support network. She privately pays for assistance, and she is currently being safely served in the community with the care network she has in place. The appellant's husband states that he is currently able to safely transfer the appellant with the assistance of one other person.

Findings of Fact

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

1. The appellant is over age 55, married, and lives in the community with her husband in an assisted living facility (ALF) (Testimony, Exhibits 4 and 5).

2. The appellant's diagnoses include acute respiratory failure, asthma, CVA, DVT, pulmonary embolism, impaired balance, left radial fracture with open reduction and internal fixation (ORIF), multiple sclerosis (MS), major depression, pneumonia, mixed incontinence, foot drop right and left foot, and osteoporosis. The appellant is total care with activities of daily living (ADLs) and incontinent care. Her spouse assists aides at ALF with transfers and care. He also manages all instrumental activities of daily living (IADLs) (Testimony, Exhibits 4 and 5).

3. The appellant is dependent on her husband for all transfers from bed to wheelchair and to/from the toilet with a sit/stand device and a two-person assist. The appellant owns

the device (Testimony; Exhibit 4).

4. In November 2023, the appellant submitted an application for admission to PACE (Program of All-Inclusive Care for the Elderly) administered by Fallon Health (Testimony).

5. A pre-enrollment assessment was performed by Fallon at the appellant's home on November 16, 2023. On December 6, 2023, a nurse and a social worker from Fallon again visited the appellant at her home for an intake assessment (Exhibit 4, pp. 34-47).

6. On December 7, 2023, [Fallon] [inter-disciplinary team] IDT met to discuss [the appellant's] health history and the discoveries obtained during the Intake assessment. IDT agreed that [the appellant] met the clinical criteria for PACE services and seemed to be safe in her current environment. IDT accepted to manage the appellant's care (Exhibit 4, p. 33).

7. On December 11, 2023, the nurse who was part of the assessment contacted the appellant to inform her she "was clinically accepted to the program and that she should expect a call from someone in the GPES department to assist them with the next step in the enrollment process, obtaining financial coverage thru MassHealth" (Exhibit 4, p. 32).

8. On January 16, 2024, a Fallon social worker called the appellant and her husband to "update them on her MassHealth approval and proceeding with enrollment" (Exhibit 4, p. 28).

9. On January 19, 2024, a Fallon physical therapist conducted a rehabilitation assessment of the appellant and, as part of her conclusions, she states "this writer has concerns about safety of transfers w/sit to stand lift and likely decline w/MS necessitating use of Hoyer lift. [Question] whether ALF staff are doing more than they should to assist w/transfer using mechanical lift" (Exhibit 4, pp. 23-24).

10. On January 26, 2024, MassHealth issued a written notice of the appellant's MassHealth eligibility, pertaining to her financial and categorical eligibility. The notice informed the appellant that she was not financially eligible for MassHealth benefits; however, the issue was appealed and prior to the hearing on April 3, 2024, the matter was resolved, and the appellant was approved for MassHealth benefits (Exhibit 1A).

11. On February 1, 2024, Fallon informed the appellant that the interdisciplinary team denied her application to the PACE. "Our team has assessed your current situation and determined that you are unable to live safely in a community setting because of the following reasons: You require a mechanical lift with the assistance of two caregivers capable of safely transferring you in and out of bed and in and out of your wheelchair multiple times daily" (Exhibits 1B and 4).

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*.

Fallon Health administers PACE on behalf of MassHealth and is MassHealth's agent. As such, Fallon 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.
> (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality**.** A provider must make those records, including medical records, available to the MassHealth agency upon request. (*See* 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
> (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.
> (D) Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

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.

…

Here, pursuant to its obligations under federal regulations, Fallon 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. As evidenced by the communication from the Fallon nurse and the Fallon social workers after the assessments, Fallon informed the appellant that she was clinically eligible for the PACE and she was enrolled, based on a decision by the inter-disciplinary team determination that she met all of the above requirements, including that she be able to live in the community safely. Fallon informed the appellant of her enrollment on December 7, 2023, December 11, 2023, and January 16, 2024. The appellant was then determined eligible for MassHealth benefits through the financial eligibility process.

On January 19, 2024, a rehabilitation assessment was performed by a Fallon physical therapist. As part of her conclusions, she stated "this writer has concerns about safety of transfers w/sit to stand lift and likely decline w/MS necessitating use of Hoyer lift. [Question] whether ALF staff are doing more than they should to assist w/transfer using mechanical lift."

On February 1, 2024, Fallon informed the appellant that the interdisciplinary team denied her application to the PACE. "Our team has assessed your current situation and determined that you are unable to live safely in a community setting because of the following reasons: You require a mechanical lift with the assistance of two caregivers capable of safely transferring you in and out of bed and in and out of your wheelchair multiple times daily."

Appellant's counsel correctly argues that Fallon effectively "enrolled" the appellant after communicating with her at least three times that she was determined by the IDT to be eligible for the PACE. On February 1, 2024, after enrolling her in the PACE, Fallon incorrectly "disenrolled" the appellant based on her anticipated needs for a mechanical lift in the future. The evidence is that the appellant's husband is able to use equipment the couple owns to effectively transfer the appellant in/out of bed and to/from the toilet with assistance by another person. Fallon was aware that the appellant required assistance from two people for transfers at the time of the November 16, 2023 assessment, prior to the three instances Fallon Health informed the appellant she was approved for enrollment in the PACE.

Fallon determined that it is reasonable to expect that the appellant may need a mechanical lift in the future; however, at the time of enrollment, this an anticipated need. At the time of enrollment, the appellant's husband does not use a mechanical lift. The husband is able, with the help of another person, to assist the appellant safely in the community. This second person has been provided by the ALF. No evidence was presented by Fallon to show that this type of assistance by one other person, in addition to the equipment already being used, makes the appellant unsafe in the community.

The appellant has shown by a preponderance of the evidence that she, at the time of enrollment in the PACE, December 7, 2023, is able to live in a community setting without jeopardizing her health or safety, using the resources that are presently available to her, including the sit/stand device. Accordingly, this appeal is approved.

Order for Fallon Health

Rescind the February 1 2024 denial notice. Enroll the appellant in Fallon Health PACE.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact

your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Division of Medical Assistance, at the address on the first page of this decision.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Fallon Health, Member Appeals and Grievances, 10 Chestnut Street, Worcester, MA 01608

[redacted]