Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2413380
Decision Date:	4/25/2025	**Hearing Date:**	02/06/2025
Hearing Officer:	Sara E. McGrath, BOH Deputy Director	**Record Open to:**	04/11/2025

Appearances for Appellant:

[redacted]

Appearances for Respondent:
Colin Zick, Esq.
Kian Azimpoor, Esq.
Rita Blanter, Serenity Care PACE Executive Director
Rita Norton, Serenity Care PACE Deputy Director
Daniella Bessarabova, Serenity Care PACE Compliance Officer
Candace Kuebel, Serenity Care PACE Consultant

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 Eligibility
Decision Date:	4/25/2025	**Hearing Date:**	02/06/2025
Respondent's Reps.:	Colin Zick, Esq. Kian Azimpoor, Esq.	**Appellant's Reps.:**	[redacted]
Hearing Location:	Board of Hearings (Videoconference)	**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 July 2, 2024, MassHealth, through its agent Serenity Care PACE, denied the appellant's request for enrollment in its Program of All-inclusive Care for the Elderly (PACE) program (Exhibit 1). The appellant filed this appeal in a timely manner on August 28, 2024 (130 CMR 610.015(B) and Exhibit 1). Denial of assistance is valid grounds for appeal (130 CMR 10.032). A PACE plan must allow for external review of its coverage decisions (42 CFR §460.124). The Board of Hearings scheduled hearing dates in October and November 2024, but each was rescheduled by agreement of the parties (Exhibit 3).

Action Taken by Respondent

Serenity Care PACE denied the appellant's request to enroll in the PACE program because it determined that the appellant was unable to live safely in the community.

Issue

The appeal issue is whether Serenity Care PACE's decision to deny the appellant's request to enroll in its PACE program is supported by regulation.

Summary of Evidence

Serenity Care PACE (SCP), on behalf of MassHealth, appeared at the hearing and was represented by counsel, its Executive Director, Deputy Director, Compliance Officer, and an outside consultant and former employee of the program. The record sets forth the following: The appellant is a female in her mid-80s who was admitted to a skilled nursing facility in July 2022 following a brief hospital stay after a fall and fractured femur. The appellant has diagnoses that include atrial fibrillation, systolic heart failure with reduced ejection fraction, cardiomegaly, aortic stenosis, acute asthma exacerbation, coagulopathy, insomnia, constipation, anxiety, and depression. The appellant takes medications for her multiple heart conditions, anxiety, constipation, and insomnia. In May 2024, SCP assessed the appellant to determine her eligibility for its PACE program. On July 2, 2024, SCP notified the appellant of its decision to deny her request for enrollment in its PACE program (Exhibit 1). SCP's notice provides in part as follows:

> After conducting the initial clinical assessment, [SCP] has determined that living in a community setting would jeopardize your health and safety due to the following indictors:
>
> · i.e. requiring 2-person and Hoyer lift assistance with transfers
> · i.e. requiring maximum assistance with grooming
> · i.e. requiring moderate assistance with feeding
> · i.e. requiring maximum 2-person assistance with toileting
> · i.e. requiring maximum assistance with lower body bathing and dressing
>
> Alternative options that may meet your care needs and ensure your safety include:
>
> · i.e. long-term care facility
> · i.e. 24/7 caregivers (Exhibit 1).[1]

On August 28, 2024, the appellant appealed this denial to the Board of Hearings (Exhibit 1). In support of her appeal, the appellant submitted a letter from her attorneys which provides in part as follows:

> On May 13, 2024, the team from Serenity PACE, including an occupational therapist, registered nurse, and compliance officer [DB] met with [appellant], [appellant's daughter], and [appellant's attorney]. During that visit, [DB] explained that Serenity PACE usually conducts a full assessment of people applying for services. She explained that in this case because [appellant] was receiving care at a facility, the assessment would only involve verbal questions and not a physical

[1] Prior to her fall and resulting fracture, the appellant was ambulatory and did not use a Hoyer lift to transfer.

assessment. This is contrary to the Settlement Agreement in the federal court class action lawsuit Masters v. Healey, which requires PACE programs to conduct eligibility screening assessments for people confined in nursing facilities.

Instead of a physical assessment, [DB] said Serenity PACE would rely on records from the nursing facility. These nursing facility records are inherently subjective, and do not reflect an accurate assessment of what limited services [appellant] is receiving in the facility, or what services she wants and would require upon discharge to her own home.

Unfortunately, PACE denied [appellant's] care. . . .

PACE's assessment is incorrect. While [appellant] requires mobility assistance including a lift and daily assistance with personal care, these services are based on a physical disability, and her health and safety are not jeopardized by her physical disability. Her home in the community is in an accessible building where others with physical disabilities live. And at the nursing facility, she currently only needs and receives approximately 3.75 hours of individual care. This modest level of services could clearly be replicated in her home which she owns.

[Appellant] only receives the following individual care at the nursing facility:

- assistance with changing her incontinence briefs in the morning (0.25 hours)
- bringing and clearing her breakfast and medication (0.25 hours)
- 2-person assistance dressing, showering, and moving to her wheelchair (1 hour)
    - Note: Showering currently only happens twice per week and constitutes the majority of this time.
- bringing in and clearing her lunch (0.25 hours)
    - Note: [Appellant] would be able to prepare her own lunch from a meal in the refrigerator in her own home.
- 2-person assistance dressing, changing, and moving back to her wheelchair (0.25 hours)
- bringing and clearing her dinner (0.25 hours)
- assistance with changing and bringing her medication (0.25 hours)

She also currently has support with meal preparation, cleaning, and laundry, though these basic home-based services could easily be provided in her own home.

Serenity PACE's denial letter further stated, "Alternative options that may meet your care needs and ensure your safety include:

- i.e. long-term care facility
- i.e. 24/7 caregivers"

> Again, Serenity PACE's assessment is incorrect. [Appellant] currently does not receive 24/7 care from the nursing facility, including rarely interacting with the night shift and receiving only the care described above during the days.
>
> We believe Serenity PACE's denial was unfounded, incorrect, and discriminatory, in part because Serenity PACE refused to conduct a full evaluation of [appellant]. While [appellant] (like many others with disabilities living in their community homes) does require physical assistance with bathing, dressing, and incontinence, other aspects of the purported assessment of her needs are inaccurate. Specifically, [appellant] does not require 24-hour care and does not want 24-hour care. While the nursing facility may allegedly offer 24-hour care because of its business model and the needs of the other residents, in fact [appellant] does not receive overnight care or want to be disturbed at all during the night. She also does not receive any daytime care for long periods of time.
>
> By solely extrapolating from the nursing facility records, Serenity PACE erroneously overestimated the care [appellant] requires and wants. Serenity PACE also erroneously concluded that [appellant's] health and safety would be jeopardized in the community due to her disability-related personal care needs. [Appellant's] disability-related home care needs can easily be reasonably accommodated and provided in the home that she owns in the community, and she should be found clinically eligible for PACE services (Exhibit 2).

SCP's outside consultant explained that to be eligible to enroll in PACE, an individual must be 55 years of age or older, be certified by the state to need the level of care, reside in the service area of the PACE organization, and, at the time of enrollment, be able to live in a community setting without jeopardizing his or her health or safety. Here, SCP determined that the appellant meets the first three requirements, but because she cannot live safely at home, she is not eligible to enroll in PACE. She explained that SCP's Interdisciplinary Team (IDT) determined that the appellant requires a level of care that is not feasible in a home environment. Specifically, the IDT determined that the appellant requires constant monitoring, 24 hours per day, seven days per week, 365 days per year. The IDT determined that a skilled nursing facility environment would be a more appropriate and safer setting for the appellant, since nursing facilities can provide 24/7 care and monitoring. According to the IDT, support available in the appellant's home setting would fall short of meeting her medical needs and ensuring her safety. SCP's outside consultant noted that PACE services can include help with activities of daily living (ADLs) as well as with instrumental activities of daily living (IADLs), and that she is not aware of any specific limit on the number of assistance hours that can be authorized.

On May 13, 2024, SCP assessed the appellant at the skilled nursing facility where she resides. According to SCP, the appellant has been a skilled nursing facility resident since she fractured her right leg approximately two years ago. SCP's attorney referenced an occupational therapy report

completed at the assessment (Exhibit 5, p. 4). SCP's outside consultant and its compliance officer explained portions of the evaluation, including the occupational therapist's assessment that the appellant transfers via Hoyer lift[2] with the assistance of two people, that she requires maximum assistance with grooming, maximum assistance with lower body bathing and dressing, maximum assistance with toileting (two-person assistance with briefs), and is at risk for falls. Further, the OT writes that the appellant is "bedbound will need air mattress," "2x person assist at all times," and "24/7" (Exhibit 5, p. 4). SCP's outside consultant testified that she has not seen the appellant's home and does not know whether the home can accommodate a Hoyer lift.

SCP's compliance officer explained that she was present at the May assessment. She stated that the appellant cannot ambulate, sit, or stand on her own. She disagreed with the appellant's assertion that the appellant can prepare her own lunch, referenced in one of the appellant's submissions (Exhibit 2). She explained that the need for maximum assistance means that an individual cannot perform a particular task and needs caregiver assistance to complete all portions of a task.

SCP's attorney referenced a clinical nursing assessment form completed at the assessment (Exhibit 5, pp. 6-7). The nurse that completed this assessment writes that the appellant is dependent for transfers, repositioning and turning, and that she is incontinent of bladder and bowel (Exhibit 5, pp. 6-7).[3]

SCP's attorney referenced the IDT meeting summary (Exhibit 5, p. 16). SCP's compliance officer explained that the IDT is comprised of 11 participants of different disciplines, all of whom were present at the meeting. The summary provides as follows:

> Potential enrollee was assessed by PACE RN and OT in a long-term care facility to determine clinical eligibility for the PACE program in a community setting.
>
> [Appellant] is bedbound, requiring 2 person and Hoyer lift assistance with transfers, maximum assistance with grooming, moderate assistance with feeding, maximum 2-person assistance with toileting, and maximum assistance with lower body

[2] SCP's outside consultant described a Hoyer lift as a medical device that helps move people who have limited mobility. A sling system lifts and transports the person. The lift can be operated manually or electrically, and can be used to move people from beds, chairs, wheelchairs, and more. SCP has PACE participants that use a Hoyer lift. SCP has a policy that Hoyer lift users must utilize two people to assist with its use.

[3] SCP representatives also referenced additional documents, including The Mini Mental State Exam, the 4Ms Form, and the Braden Scale for Predicting Pressure Sore Risk (Exhibit 5, pp. 9-14). The documents were completed during the appellant's assessment. The appellant received a total score of 12 on the Braden form, which the SCP compliance officer described as a low score, indicating that the appellant is at high risk for pressure ulcers. She stated that the appellant's limited mobility and use of incontinence briefs are likely the biggest contributors to the low score.

bathing and dressing.

Based on the assessments, the IDT agreed that because [appellant] requires constant supervision and frequent 2-person assistance with ADLs, beyond what PACE can provide to ensure the participant's safety in the community, the IDT is denying PACE enrollment. The IDT agreed that [appellant's] current long-term care residence is the most appropriate setting to meet all her ADL and IADL needs.

Per the Serenity Care policy, the PACE Executive Director will be informed of the IDT's decision. If the decision is upheld by the Executive Director, Serenity Care will be informing the State Administering Agency (SAA) of this enrollment denial. If the SAA upholds the denial, PACE will notify [appellant's] attorney in writing within five business days of receiving the SSA's review giving the reason for the denial and the applicant's right to appeal.

Update: 06/11/2024
Denial documentation was reviewed by PACE Executive Director and denial had been upheld. Documents will be sent on to the SAA for review.

Update: 06/11/2024
Denial documentation was sent to SAA for approval.

Update: 07/02/2024
Received SAA approval to deny enrollment

Update: 07/02/2024
Denial of Enrollment letter mailed to [appellant's] attorney (Exhibit 5, p. 16).

The appellant was represented by two attorneys. The appellant's attorneys argued that the appellant is currently eligible to enroll in the PACE program because her care needs are at a different level from the time of the PACE assessment in May.[4] The appellant had been hospitalized in April for issues related to a urinary tract infection, and the May assessment took place only a few weeks after discharge, at a time when she was in a more compromised state. Her current condition is improved, and she would benefit from the care management available through PACE. The appellant has been determined eligible for the state home care program, further evidence that she can be safely served in the community and is eligible to enroll in PACE (Exhibit 10).

The appellant's attorney questioned SCP's consultant regarding other PACE members with health care needs like those of the appellant; she stressed the importance of the home environment. The

[4] SCP's attorney argues that the appellant's current condition is not relevant to the appellant's condition at the time of the assessment in May 2024.

SCP consultant explained that the main issue here is that the appellant intends to live alone, while other similar members typically live in other environments such as assisted living facilities, rest homes, supportive housing, or at home with other family members. She stated that the appellant could be at significant risk in a crisis. For example, if there was a fire in the middle of the night when the appellant was home alone, she may not be able to exit the home safely. The appellant's attorney noted that the appellant dealt with a crisis several years ago and was able to use her phone and an emergency assistance device to call the maintenance team and was able to safely and quickly evacuate her building.[5]

The appellant submitted a clinical evaluation report from her expert witness, Barbara Pilarcik, RN.[6] Ms. Pilarcik testified that her evaluation process included reviewing records from the nursing facility, SCP, and two medical certifications regarding guardianship or conservatorship. She met with the appellant twice, spoke to the appellant's daughter by telephone, and spoke to the appellant and her daughter together by telephone. She also met with a nursing facility social worker who works with the appellant. She testified that the appellant is cognitively intact and is firmly committed to returning to living in the community. She testified that the appellant feels that she would need four hours of caregiver assistance in the morning, and another four hours of assistance in the evening. The appellant reported that while she lives on the third floor of her building, the building has an elevator and a security guard. The appellant stated that she would rely on on-line services or family for grocery and incidental shopping and would utilize a personal emergency device. Ms. Pilarcik's report provides, in part, as follows:

> [Appellant] is appropriate for living in her own home, with sufficient supports. At minimum she would need assistance for four hours in the morning and four hours in the evening for personal hygiene, cooking and transfer to her wheelchair. Not all of the hours of assistance require two people. She would need a two person transfer for getting out and into bed daily and for taking a shower. At the nursing facility she currently takes a shower two times a week and has bed baths on the other days. This would also be sufficient when she is in her own home. Other than for transferring, she would require one person assistance for setting up her meals, bathing of lower body and set up for upper body bathing. She is capable of feeding herself so long as her meals are prepared and placed within reach. She is capable of doing her own grooming so long as her supplies are set up within her reach. She is capable of taking her own medications if they are set up in daily dose packs which are easily obtained through her pharmacy. She can take her own medication. She is able to re-position herself in bed and in the wheelchair and demonstrated

[5] SCP's attorney questioned the relevance of these statements, pointing out that this event took place before the appellant fractured her femur.

[6] Ms. Pilarcik has over 60 years of nursing experience serving people with complex medical needs; her experience includes various roles at a non-profit agency that provides community-based services to people with disabilities leaving institutional settings (Exhibit 7).

movement to me. She is able to propel her own wheelchair and demonstrated this to me by propelling her wheelchair down the hall, onto the elevator and out of the building. She would need assistance with instrumental activities of daily living such as laundry, homemaker services and transportation to medical appointments. She stated she would primarily rely on grocery delivery services for shopping and on-line shopping for other purchased needs. She would need a personal emergency assistance device twenty-four hours a day.

She would benefit from an OT assessment to assist in setting up and living in her home with a wheelchair and Hoyer lift. She would benefit from an assessment regarding adaptive equipment and specialized devices, or "smart" devices, to help her be independent in her home such as automatic turn off of stoves, automatic door openings and closing, camera monitoring systems, and devices to help in bathing and dressing. She would benefit from PT in order to increase strength and balance. She would benefit from home health nurse visits on a weekly basis to monitor her health concerns, which may be modified as she settles back into her home routines. She is currently stable in her medical diagnoses. [Appellant] did not express a need or interest in socialization activities as she has family in the area and her social activities revolve around them. She is very religious and stated that she does not physically attend church but accesses religious services and activities on-line. She would need appointments set up with a Primary Care Provider and any specialists, such as cardiology, as recommended by the PCP. Community programs such as PACE and Area Service Access Programs are capable of providing the assessments and supports that [appellant] would require. In my work with individuals in the community, I am aware of agencies in the Greater Springfield area that have services that would meet [appellant's] constellation of needs.

The OT evaluation and Clinical Nursing Assessment from Serenity PACE were completed on May 13, 2024 and assessed [appellant] as needing maximum assistance with grooming, repositioning, self-care and lower body bathing. These evaluations took place seventeen days after a hospitalization at Baystate Medical Center for sepsis and a UTI. I visited [appellant] in September and November, 2024 and found that she was able to independently re-position herself in both the bed and the wheelchair. She states that she feeds herself without assistance and is able to bathe her upper body. She could also bathe her lower body with adaptive bathing equipment such as long-handled brushes. She repeatedly tells everyone that she wants to be self-sufficient and yet she last received PT and OT in July of 2023. She is in a setting that is not designed for self-sufficiency and has lost skills since her admission. . . . She also recognizes that she needs assistance with transferring and needing two people for the Hoyer lift.

I visited with [appellant's] social worker at [the nursing facility]. [She] said the

> nursing facility is ready to work with [appellant] on discharging her to her home at any time. She knows the family is involved and visits often. She stated that she would qualify for the MFP-CL. . . .
>
> Based upon my direct interaction with [appellant], my review of the records and my discussion with the nursing facility social worker, I believe [appellant] could be successfully returned to her home with appropriate supports such as those offered under the PACE and/or the MFP-CL waiver. She continues to have a strong desire to return home and is motivated to work with a community provider to ensure that she will maintain healthy behaviors once home. She has a strong family support system in the immediate vicinity of her home. She has successfully lived in the community for all of her life and has consistently maintained a desire to return home for the last two years. She is compliant with all of the nursing facility treatments and services and recognizes the importance of following the doctor's orders once she is living in her own home again (Exhibit 7).[7]

Ms. Pilarcik added that if the appellant requires toileting while sitting in her wheelchair during the day, the assistance of two people would be required to transfer the appellant via Hoyer lift from her wheelchair to the bed for assistance, as the appellant does not have the upper body strength to push herself up to facilitate accomplishing this task in the wheelchair. She clarified that the appellant would also require assistance from two caregivers for two hours in the morning and two hours in the evening (for Hoyer transfers), but that all other assistance could be provided by one caregiver. She stated that she disagreed with SCP's position that the appellant is bedbound; she saw the appellant move from her bed to her wheelchair (with assistance). She stated that the appellant can do some activities independently, including feeding herself. She feels that with additional practice and adaptive equipment, the appellant may even be able to prepare a meal for herself, if supplies were placed within her reach. She can take her medications independently if the medication itself is within her reach. She needs minimal assistance with the grooming tasks of brushing her teeth and hair, and applying lotion, and would also need assistance trimming her toenails. For dressing, she would need the assistance of one caregiver to help her retrieve her clothes, put a top over her head, to don lower body clothing. For showers and bed baths, the appellant would need the assistance of one caregiver (two for transfers); she could soap and rinse her body herself and could possibly wash her own hair and lower body with adaptive equipment. She would need assistance with setting up and cleaning up after bathing. The appellant needs assistance with her instrumental activities of daily living, but could probably dust and sweep with adaptive equipment, and with assistance setting up, could also do laundry if the machines were at wheelchair level.

[7] The appellant had planned to appear at hearing but encountered technical difficulties. She submitted an affidavit in which she explains what she feels are her needs for assistance with ADLs and IADLs (Exhibit 6). Her opinion essentially mirrors that of Ms. Pilarcik.

The appellant's attorney argued that Ms. Pilarcik's assessment demonstrates that the appellant has more ability and functionality now than she did in May. He referenced the occupational therapy report, noting that there are inaccuracies including that the appellant does not always require two-person assistance, is not bed bound, and does not require maximum assistance with grooming. Further, her needs regarding lower body bathing and dressing, as well as toileting, are in question. He also referenced the clinical nursing assessment, noting that the appellant can in fact reposition herself now.

Responding to questions posed by SCP's attorney, Ms. Pilarcik clarified that she has not visited the appellant's apartment and does not know if it is ADA compliant. She agreed that in the event of a fire, the elevators would not work and that someone would have to carry the appellant out of the building. She also noted that eight hours of assistance per day (four hours in the morning and four hours in the evening) is the minimum amount of assistance that the appellant would need, and that it could be more.

Post hearing, the appellant submitted additional documentation, including a supplemental affidavit, an assessment of the appellant's residence, and a description of the state home care program. The appellant's attorney included the following summary:

> In summary, [appellant's] condominium can readily be made accessible to her through minor renovations. The most complicated piece relates to the width of the bathroom door and relatively small space in the bathroom. However, Nurse Pilarcik made practical recommendations for accessibility modifications that would allow [appellant] to use her bathroom effectively. Nurse Pilarcik also points out that, presently, [appellant] does most of her toileting in her adult diapers and could do bed baths until the renovations are complete.
>
> [Appellant's] affidavit clearly explains that she uses her arms to push herself up while a single care attendant cleans and changes her incontinence products. She does not require two-person assistance for toileting activities. Her supplemental affidavit also addresses her safety plan for an emergency in her apartment, which includes calling for help using her phone, a life alert device, calling building staff, being sure that building staff are aware of her needs in advance in case of emergency, calling neighbors, and keeping essentials near and accessible to her.
>
> Though Greater Springfield Senior Services was unable to write a letter describing the state home care program, the attached email from Cristina Alvarez, Community Transition Liaison, attests they have found [appellant] eligible to live in the community based on her care needs. The Notice of Eligibility and Initial Service Plan from Greater Springfield Senior Services, which were included with our previous submission on 2/6/2025, also show her eligibility for and acceptance into the program. We have included a description of the state home care program from the

Mass.gov website and information about the program from the Greater Springfield Senior Services website (Exhibit 12).

The appellant's supplemental affidavit provides the following relevant additional information:

> One of the ADLs I get help with at East Longmeadow, and would need help with if I lived at home, is toileting.
>
> > I rarely use a physical toilet. I find it easier to use adult diapers (Depends), to avoid having to be transferred from the wheelchair to the toilet and back again.
> >
> > I use Depends for both urination and bowel movements.
> >
> > I only need one person's assistance to change my Depends. I hold the armrests of my wheelchair and push myself up so the person assisting me can take off the Depends, clean me up, and put new Depends on. I have full use of my arms and have maintained my arm strength, so I am easily able to hold myself up during this process. This is similar to the process of taking on and off my underwear and pants, which also only requires one person's assistance.
> >
> > Typically, my depends are changed 5-6 times per day. It takes about 5 minutes at most each time for someone to assist me with changing Depends.
> >
> > I believe that PCAs could assist me with this ADL if I lived at home.
>
> I have put a lot of thought into how I could be safe living at home, and I would not pursue this option if I were not 100% sure that I could be safe doing so.
>
> > My condo building is wonderful and is an extremely disability-friendly building. I chose the condo building because I heard that it was great for older people. Many older people and people with disabilities who use wheelchairs live in my building. I had a few neighbors who used wheelchairs and lived on their own without any family or anyone else living with them. The building is fully wheelchair accessible and has elevators. The staff are very helpful, and I can call the on-call maintenance number any time if I ever need assistance and they have always responded promptly. I feel safe knowing that they would be there for me and the other elderly residents if an emergency were to happen.

> I know that the staff of my condo building keep a list of the elderly and disabled in the building to help us during emergencies.
>
> In 2022, before my fall, there was a small fire in my building. Within two minutes of the fire alarm going off, two or three building staff members came into my condo with a stretcher to take me out of the building. They lifted me onto the stretcher and got me out of the building quickly and safely. I was not disabled at the time, but because of my age, I could not move very fast, so I appreciated their help. I asked how they had gotten to me so quickly, and one of the staff members told me that they kept a list of older people and disabled people to help in case of emergencies. I cannot recall the staff members' names, but they were efficient and respectful and soon had everybody, including all the older and disabled people, out of the building.
>
> If an emergency were to arise, I would call 911 immediately. I plan to wear a life alert device around my neck at all times so that it is easy for me to call for help. I would also call building maintenance, and I have their number programmed into my phone so I can access it very easily. I also like to get to know my neighbors, so I will make sure to get their numbers and program them into my phone too in case I need help. I always keep medications and things I need beside my bed to take with me if there is an emergency. I feel safe knowing that my condo building staff will be there to help and they are aware and keep a record of my needs.

Everyone who uses a wheelchair and lives alone without family nearby has to plan for emergency situations and unexpected events. I am no different, and I have thought through these plans. I feel I have the right to live by myself in my own home, and I have specifically chosen a place to live that is known for being helpful to the elderly so that I could stay there in my old age (Exhibit 13).

The appellant submitted a supplemental evaluation report from her expert witness, Barbara Pilarcik, RN. That report provides, in relevant part, as follows:

> I conducted an in-person review of her condominium on March 6, 2025. . . .
>
> Her condominium unit is on the third floor of a large, multi-unit building. Her unit is accessed via an elevator and there are also stairs from the third floor to the ground level.
>
> Her unit consists of a [sic] two bedrooms, a bathroom, a kitchen and a living room. The unit is furnished and ready for occupancy. It is clean, free of clutter and tastefully furnished. The bedrooms and living rooms are large, with

multiple windows and well lit.

The wheelchair that [appellant] currently uses is an Acta-Back Comfort manual wheelchair. The width of the chair, as I measured is thirty-two inches wide.

The entry door to her condominium is thirty-seven inches wide.

The door to her bedroom is thirty inches wide. The bedroom door has molding frame around it which could be removed and enlarged.

The bathroom door is twenty-six inches wide. The bathroom contains a tub, toilet and sink. There is adequate wall space for this doorway to be enlarged and fitted with a pocket door.

The living room doorway is thirty-one inches wide and has molding around it which could be removed and enlarged.

The kitchen door is thirty-eight and one-half inches wide. Her eating area is outside the kitchen, at one end of the living room. The kitchen is furnished with a stove, refrigerator, microwave and other small appliances. There is room in the kitchen to arrange items to be within reach of a person in a wheelchair.

Both [appellant] and her son stated that they are willing and financially capable of renovating the condominium to make it more accessible. [Appellant] indicated an interest in converting the bathroom tub area into a roll-in shower.

Based upon my conversation with [appellant] and her son, I recommend that the eight hours of staffing recommended in my previous report be divided into three separate times: 9 am-12 noon, 4 pm-7 pm and 9 pm-11 pm. This schedule more nearly coordinates with her preferred hours of sleep and activity.

[Appellant] would benefit greatly from receiving physical therapy. At my previous visit to the nursing facility on November 13, 2024, I inquired whether she would like to receive PT and she affirmed that she would. I then asked the nursing staff if they had PT available and if she could receive PT and they stated that they could make a referral for her to receive PT. On March 6, 2025 she stated that she has not received any PT and would definitely like to receive assistance in gaining strength and increased independence in mobility.

Prior to her fractured hip, [appellant] was able to walk with a cane or a rollator for longer distances. She lived alone and was fully capable of caring for herself.

Shortly after her fractured hip, she received PT for a period of time but it was ended due to "maximal functional ability" despite the fact that she could no longer walk or do a stand-pivot transfer. The ability to do a stand-pivot transfer with increased muscle strength and balance would enable her to be a one-person transfer and not rely upon the Hoyer lift. This would greatly increase her independence and no longer require two staff for transfers.

[Appellant] has a strong desire to regain this ability and I strongly recommend that she have PT services. To my observation, there is no reason she could not regain strength and balance. It is very unfortunate and not due to her own desires, that she has lost a critical skill during her two years in the nursing facility. A fractured hip does not necessarily need to end a person's ability to have some measure of mobility.

The major issue impeding wheelchair mobility in [appellant's] home is the size of the bathroom. However, both [appellant] and her son indicated a willingness and the capability to renovate the bathroom for a roll-in shower.

The size of the bathroom also currently represents a challenge for toileting. This could be rectified with renovation. It is relevant to note that despite having an accessible toilet in her room in the nursing facility, that the staff does not toilet her but uses adult protective undergarments despite her desire to be toileted.

[Appellant's] condominium is accessible in all areas, with minor modifications, except for her bathroom. She currently does not use the accessible toilet at the nursing facility and could rely upon bed baths until renovations can be done to the bathroom.

Based upon my personal evaluation, I continue to believe that [appellant] can be successfully served in her home, with appropriate staffing supports as outlined above. Even without a return to being able to do a stand-pivot transfer, a Hoyer lift would fit into all rooms with the exception of the bathroom. Prior to any discharge, the community agency would do an accessibility determination and make recommendations for technology and adaptive equipment that would assist her. Many people live in the community with her level of disability. I have served and evaluated people who have greater needs than [appellant] including people who rely upon ventilators to breathe and yet they are able to live in the community. It is tragic that a fractured hip resulted in two years of lying in bed or in a wheelchair which left [appellant] without the mobility and independence that she enjoyed for her entire life (Exhibit 14).

Post hearing, SCP submitted additional documentation, including a memorandum, an affidavit of Olga Opanasevich, and proposed findings of fact and rulings of law (Exhibits 16-18).

SCP's post-hearing memorandum provides, in relevant part, as follows:

> [Appellant's] new affidavit describes her current perception of her physical condition. It is not an objective evaluation by the eleven trained members of the inter-disciplinary team ("IDT") required by the PACE regulations to perform such evaluations, nor does it challenge the 2024 IDT evaluation of [appellant]. See Tr. at 10, 13, 141.
>
> While it is admirable that the [redacted]-year-old [appellant] is confident of her ability to return to her condominium, that is not relevant evidence, nor is it reliable evidence. See Dunning, Heath and Suls, "Flawed Self-Assessment: Implications for Health, Education, and the Workplace," Psychol. Sci Public Interest 2004 Dec;5(3):69-106 ("In general, people's self-views hold only a tenuous to modest relationship with their actual behavior and performance. The correlation between self-ratings of skill and actual performance in many domains is moderate to meager indeed, at times, other people's predictions of a person's outcomes prove more accurate than that person's self-predictions. In addition, people overrate themselves…. People are unrealistically optimistic about their own health risks compared with those of other people.") As such, [appellant's] second affidavit should be completely disregarded as irrelevant and unreliable. . . .
>
> This "assessment" by Ms. Pilarcik, who was a witness for [appellant] at the hearing, is not admissible evidence, as it is an unsworn, out-of-court statement offered for its truth (and worse, a statement by someone who already testified and is no longer available for cross-examination). See Commonwealth v. Richardson, 59 Mass. App. Ct. 94 (2003) ("Although some authorities (the modern view) suggest that objections to hearsay no longer are important where the declarant is subject to cross-examination, as was Francis, this does not appear to be the rule in Massachusetts concerning unsworn out-of-court statements not made in the presence of a fact finder. See discussion of the modern and orthodox views of hearsay in *Commonwealth v. Daye*, 393 Mass. 55, 66-75, 469 N.E.2d 483 (1984). That case and *Commonwealth v. Clements*, 436 Mass. 190, 193, 763 N.E.2d 55 (2002) reflect the caution with which Massachusetts courts treat extra-judicial statements even if given under oath.") Even if it were admissible, the proffered 2025 "assessment" of [appellant] and her condominium is irrelevant, as it occurred many months after the IDT evaluation that is the sole subject of [appellant's] appeal.

In the event that this "assessment" is considered at all, it is notable for what it says about [appellant] not being able to live in her condominium at this time, because she is wheelchair bound, and her wheelchair will not fit in three rooms of her unit. In particular, Ms. Pilarcik admits that:

> Her wheelchair is 32 inches wide, but her bedroom door is 30 inches wide;
> Her wheelchair is 32 inches wide, but her bathroom door is 26 inches wide;
> Her wheelchair is 32 inches wide, but her living room doorway is 31 inches wide

It remains undisputed that any caregivers would need a Hoyer lift in order to bathe [appellant], Tr. at 20-21. And it also is undisputed that this necessary Hoyer lift will not fit in the condominium's bathroom. See "Assessment" Para. 20 ("a Hoyer lift would fit into all rooms with the exception of the bathroom.") Accordingly, [appellant] was unable to safely live in her unit in 2024 even if she had been otherwise eligible for PACE services, and she still cannot safely live in that unit, making the entire exercise of PACE application moot for her, given her stated goal is to live in her unit. See Assessment, para 1 ("I was asked … to evaluate her current home for suitability for her return.")

Further, Ms. Pilarcik, who makes no claim to be a licensed home improvement contractor, nevertheless makes wildly speculative claims about some door moldings that could be removed, other doors widened, or converted to a "pocket door," and a full bathroom renovation, all proffered without any professional evaluation of the conditions on site, applicable building codes, condominium bylaws, etc. to understand if any of what she speculates *could* happen is in fact possible (let alone what it would cost). All statements regarding modifications to the condominium must be disregarded as without any foundation for Ms. Pilarcik to testify on such expert subjects that are well outside her own area of expertise.

Ms. Pilarcik also provides hearsay statements by [appellant] and her son about their purported ability to renovate the unit (at some unspecified time and in some unspecified manner). These statements are not evidence on which the Board of Hearings may base a decision and must be disregarded (Exhibit 16).

SCP submitted an affidavit from Olga Opanasevich, which provides, in relevant part, as follows:

> I am the occupational therapist who was part of the interdisciplinary team (IDT) that evaluated [appellant] in 2024 for her potential PACE eligibility. . . . .

I understand that [appellant] has expressed her desire to return to her condominium at [redacted] in [redacted], Massachusetts.

I understand that [redacted] was built in 1955. . . . As such, I understand that [redacted] was not constructed in compliance with the Americans with Disabilities Act of 1990, which I understand mandated handicapped accessibility in places of public accommodation.

[Appellant] has provided no evidence that I am aware of that her condominium at [redacted] has been modified to accommodate a wheelchair. To the contrary, the affidavit submitted by Ms. Pilarcik established that numerous accommodations would be needed to allow [appellant] to live successfully in her condominium.

From the evidence presented by [appellant], there is no conclusion but that it is completely unrealistic for [appellant] to safely live at her condominium and that her safety will be at risk in the event of an emergency.

I understand that as recently as 2018, there was a fire at [redacted] that required 130 residents to be evacuated and those on the upper floors to be evacuated by ladder: See Attachment A, "Arson squad investigates condominium fire," [redacted] Republican, June 20, 2018 at A5. . . .

[Appellant's] affidavit states "…two or three building staff members came into my condo with a stretcher to take me out of the building" when a "small fire" occurred in her building. It is unclear whether a stretcher exists in her building. Further, it is unclear which staff members will be responsible for [appellant's] around the clock safety, at what times the staff members will be on site, and how the staff members will place [appellant] onto a stretcher and will safely evacuate her from the building in the event of an emergency.

[Appellant] states it would take approximately five minutes at most for a caregiver to change her adult undergarment ("Depends"). [Appellant] further states that she would hold the armrests of her wheelchair and push herself up so the person assisting her can take off her Depends, clean her, and replace her Depends. Based on my experience with elder care, I find it implausible for an [redacted]-year-old woman in [appellant's] condition to hold herself up for five minutes while a caregiver changes her Depends. No objective evidence was provided to support this claim, by [appellant] or in the "assessment" of Ms. Pilarcik.

According to the Cleveland Clinic, age-related progressive loss of muscle mass and strength most commonly affects individuals 60 years of age and older, and the rate of this phenomenon increases with age. See Attachment B. In fact, 11 or 50% of

individuals 80 years and older are estimated to experience these symptoms. Id. Further, [appellant] states that she is wheelchair dependent due to a broken femur from a fall sustained in 2022. Given that she is wheelchair dependent, [appellant] is at heightened risk for losing muscle mass and strength because she is physically inactive and has partially lost mobility. Absent physical exercise, [appellant] will likely continue to lose muscle mass. See id.

When evaluating the totality of the circumstances, it is implausible for [appellant] to be able to hold herself up for the time necessary for a caregiver to change her Depends. For that reason, two individuals may be necessary to change [appellant's] Depends. One individual will be required to hold up [appellant], while the other individual changes her Depends.

The estimates that it would take a caregiver five minutes "at most" to change [appellant's] Depends is again, not based on any objective evidence and unrealistic in my experience. This process would take closer to 15 minutes given that it encompasses the following steps:

(1) washing one's hands with soap and water;
(2) putting on a pair of medical gloves;
(3) unfastening the tabs of a soiled diaper;
(4) pulling the diaper out from under the patient;
(5) rolling the soiled diaper inward as it is being removed to contain any mess;
(6) placing the soiled diaper in a plastic grocery bag;
(7) thoroughly cleaning the diaper area using moistened wipes;
(8) placing the used wipes in the grocery bag;
(9) checking for bedsores;
(10) applying barrier cream to the perineum to moisturize and protect the skin;
(11) opening a fresh diaper and tucking the side farthest away from the hip;
(12) pulling the diaper between the individual's legs;
(13) removing any wrinkles and fastening the tabs;
(14) removing the disposable gloves and placing them in a grocery bag to discard; and
(15) washing and drying one's hands. *See* Attachment B. . . .

Going through this process, while balancing frequent diaper changes, would take a caregiver most of each day. *See* Attachment C. Because the process of changing [appellant's] Depends would take significantly longer than five minutes, it is even more implausible [appellant] would be able to hold herself up for such a period (Exhibit 17).

Findings of Fact

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

1. The appellant is a female in her mid-80s who was admitted to a skilled nursing facility in July 2022 following a brief hospital stay after a fall and fractured femur. The appellant still resides at the skilled nursing facility.

2. In April 2024, the appellant applied for enrollment in SCP's PACE program, indicating that her intended community setting would be the condominium she owns and resided in prior to her nursing facility admission. The appellant intends to live alone in her condominium.

3. In May 2024, SCP assessed the appellant to determine her eligibility for its PACE program.

4. SCP's IDT determined that the appellant requires a level of care that is not feasible in a home environment. Specifically, the IDT determined that the appellant requires constant monitoring, 24 hours per day, seven days per week, 365 days per year. The IDT determined that a skilled nursing facility environment would be a more appropriate and safer setting for the appellant.

5. The appellant has diagnoses that include atrial fibrillation, systolic heart failure with reduced ejection fraction, cardiomegaly, aortic stenosis, acute asthma exacerbation, coagulopathy, insomnia, constipation, anxiety, and depression.

6. The appellant takes medications for her multiple heart conditions, anxiety, constipation, and insomnia.

7. The appellant requires assistance with all her ADLs and IADLs.

8. The appellant is transferred via Hoyer lift and thus requires the assistance of two caregivers to transfer in and out of bed and in and out of the shower.

9. The appellant requires the assistance of at least one caregiver to perform all other ADLs, as well as all IADLs.

10. The appellant's wheelchair will not currently fit through the doorways of three rooms in the appellant's condominium – the bathroom, the bedroom, and the living room.

11. The appellant maintains that all three rooms can and will be modified to fit her wheelchair.

12. The appellant's Hoyer lift will not currently fit in her bathroom.

13. The appellant maintains that she does not need the bathroom for toileting, as she can use adult protective undergarments.

14. The appellant maintains that until the bathroom is renovated, she can rely solely on bed baths for bathing.

15. In the event of an emergency such as a fire in the building, the appellant's plan is to always wear a life alert device around her neck, and to use her cell phone to call 911, building maintenance, and/or her neighbors. She plans to keep medications and other essentials beside her bed to take with her in case of emergency.

16. On July 2, 2024, MassHealth, through its agent SCP, denied the appellant's request for enrollment in PACE. SCP determined that living in a community setting would jeopardize the appellant's health and safety due to the following indicators:

    · requiring 2-person and Hoyer lift assistance with transfers
    · requiring maximum assistance with grooming
    · requiring moderate assistance with feeding
    · requiring maximum 2-person assistance with toileting
    · requiring maximum assistance with lower body bathing and dressing

17. The appellant timely appealed this determination to the Board of Hearings.

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)). 130 CMR 519.007(C)(1) and (2) set forth the following regarding PACE:

> 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.

Eligibility Requirements. In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of their marital status. The applicant or member must meet all 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% of the federal benefit rate (FBR) for an individual.

The PACE program is also governed by federal regulations. 42 CFR §460.150 outlines the basic eligibility requirements set forth above, but also mandates that at the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety.

SCP's denied the appellant's request to enroll in its PACE program on the basis that she needs extensive assistance with ADLs, as well as around-the-clock supervision to ensure her safety. The parties dispute the level of physical assistance the appellant currently needs. For example, the appellant argues that she has become stronger since SCP's assessment last May, and with this improvement, she requires less assistance with certain tasks, such as toileting (one caregiver instead of two).[8] Notwithstanding the appellant's reported gains, the current record lacks sufficient evidence to demonstrate that the appellant will be able to safely live alone in her condominium.

SCP has persuasively argued that given the appellant's unrefuted need for maximum assistance with transfers, her safety is at risk during the time periods she will be at home alone. The appellant's expert witness has recommended eight hours of caregiver assistance per day, divided into three separate time periods, three hours in the morning, three hours afternoon/evening, and two hours at night. This level of assistance leaves 16 hours each day during which the appellant will be alone, whether sleeping or awake. The appellant has devised a safety plan in case of an emergency; this plan includes wearing a life alert device around her neck and using her cell phone

[8] Notably, SCP did not indicate that caregiver assistance under its PACE program is limited to a certain number of hours per day or a certain number of caregivers per task.

to call 911, building maintenance, and/or her neighbors. While contacting emergency services is certainly a prudent plan, it falls short of ensuring the immediate assistance that the appellant may need in the event of, for example, a fire in her unit. As noted by SCP, the record does not include specific information regarding whether building staff are on site 24 hours per day, or whether staff are responsible for residents' safety. Further, while the appellant has indicated that she would like to get to know her neighbors, her affidavit makes clear that she does not currently know her neighbors and has no information regarding their willingness to help in an emergency.

SCP has also persuasively argued that the appellant's condominium is not currently fully accessible and would need to be renovated to accommodate her wheelchair and Hoyer lift. While some of the renovations may be minor, such as removing molding from certain doorways, other planned renovations are more extensive. According to Ms. Pilarcik, the bathroom doorway needs to be widened, a pocket door installed, and there are plans to convert the tub area to a roll-in shower. As the bathroom is presently configured, neither the appellant's wheelchair nor Hoyer lift will fit in the room, preventing her from using the tub, toilet, and sink. Ms. Pilarcik feels that with physical therapy, the appellant may regain the strength and balance needed for a stand-pivot transfer, which would eliminate the need for the Hoyer lift. However, this physical improvement is far from guaranteed, and in her present physical state, the appellant is unable to use her bathroom at all. She must perform all tasks related to bathing, toileting, and grooming outside of the bathroom.

As set forth above, the applicable federal regulations mandate that at the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety (42 CFR §460.150). To be fully accessible, the appellant's condominium needs major renovation. As noted by SCP, the record contains no documentation regarding when, and more importantly, if, these renovations are possible and in accordance with the applicable building codes and/or condominium regulations and by-laws. Without these renovations, the appellant will have to rely on "bed baths" for all her hygiene care. Currently, however, the appellant cannot access the bed in her bedroom, or her living room, if that area could serve as a possible alternative location for a bed. Given the appellant's high risk for skin breakdown, these current restrictions pose a risk to the appellant's health.

On this record, the appellant has not demonstrated that her health and safety can be appropriately maintained at home. She has therefore not met her burden to show that SCP erred in its decision to deny her request for enrollment in its PACE program. For these reasons, the appeal is denied.

Order for Respondent

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.

Sara E. McGrath
Deputy Director
Board of Hearings

cc:

Respondent Representative: Colin Zick, Esq., Foley Hoag, LLP, 155 Seaport Boulevard, Boston, MA 02210

Respondent Representative: Serenity Care PACE, Attn: Daniella Bessarabova, 604 Cottage Street, Springfield, MA 01104

Appellant Representative: [redacted]

Appellant Representative: [redacted]