Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2419852
Decision Date:	4/18/2025	**Hearing Date:**	2/12/2025
Hearing Officer:	Cynthia Kopka	**Record Open to:**	2/28/2025

Appearances for Appellant:

[redacted]

Appearances for Respondent:

John Shea, Esq.

Sheila Despres, Psych Director, Summit Elder Care

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:**	Program of All-Inclusive Care for the Elderly (PACE)
Decision Date:	4/18/2025	**Hearing Date:**	2/12/2025
Respondent's Reps.:	Attorney and representative	**Appellant's Reps.:**	[redacted]
Hearing Location:	Quincy (virtual)	**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

By notice dated November 4, 2024, Fallon Health/Summit Elder Care, a Program of All-inclusive Care for the Elderly (PACE) provider (hereinafter "Summit" or "Respondent") denied Appellant's request for coverage of long-term care. Exhibit 1. On November 21, 2024, Respondent upheld the denial. *Id*. Appellant filed a timely request for fair hearing with the Board of Hearings (BOH) on December 26, 2024. Exhibit 2. Denial of assistance is valid basis for appeal. 130 CMR 610.032(A). A PACE plan must allow for external review of its coverage decisions. 42 CFR § 460.124. The hearing record was held open through February 28, 2025 for the submission of additional evidence. Exhibit 5.

Action Taken by Respondent

Respondent denied Appellant's request for coverage of long-term care.

Issue

The appeal issue is whether Respondent followed regulations when it denied Appellant's

request.

Summary of Evidence

Respondent was represented at virtual hearing by an attorney and its representative, who submitted records in support, Exhibit 4. Appellant was represented at virtual hearing by her representative (her daughter/POA) and attorney. Appellant submitted records in support, Exhibit 2. A summary of testimony and documentary evidence follows.

Appellant has been enrolled in Respondent Fallon Health/Summit Elder Care's PACE program since January 1, 2024. Respondent's attorney cited to the federal regulations governing the PACE program, specifically the scope and purpose of the PACE program as set forth in 42 USC § 460.4:

> (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.

PACE is a voluntary program and Appellant was not required to enter into the program, but applied and was accepted. Respondent's attorney argued that if Appellant applied for PACE as of the date of hearing with her current medical presentation, she would be approved as meeting PACE criteria.

Part of the PACE program requirements includes the creation of an interdisciplinary team (IDT), which is responsible for creating the care plan for the participant. The IDT's responsibilities include initial assessment, periodic assessment, plan of care, and coordination of 24-hour care.

Appellant is in her late seventies with medical conditions including Alzheimer's dementia with behaviors, stage 3 chronic kidney disease (CKD), history of breast cancer, history of cerebrovascular accident (CVA), carpal tunnel syndrome, and hypertension. *Id*. at 23, 68. Upon enrollment in the PACE program in January 2024 (and to date), Appellant was living with her daughter/representative as a paid caregiver in an in-law apartment on the second floor of the home with a stair lift. *Id*. at 67. At the time of enrollment, Appellant attended a PACE clinic day program two times per week and was never left home alone. *Id*. at 75, 77-78. Appellant's chronic conditions were stable at the time of the evaluation, and she had no hospitalizations since December 2022. *Id*. at 67-68. Appellant required supervision for all of her activities of daily living (ADLs), including minimum/moderate assistance with self-care, supervised feeding, minimal assistance and reminders for toileting and occasional incontinence, and close supervision and

assistance with mobility with her rolling walker. *Id*. at 77-78. Appellant could ambulate with her walker at a steady and appropriate pace and needed cues and supervision. *Id*. at 83. She was not indicated for physical therapy (PT) or occupational therapy (OT) at the outset of her enrollment. *Id*. at 77, 83. On June 21, 2024, Appellant's PCP noted at a semiannual evaluation that Appellant increased her participation with the PACE clinic day program to five days per week. *Id*. at 26. Appellant's chronic conditions were stable. *Id*. at 26-34. In July 2024, Appellant had a one-week stay at a respite facility so her representative could go on vacation. *Id*.

On October 30, 2024, Appellant's representative requested on Appellant's behalf for coverage of long-term care (LTC). Exhibit 4 at 12. This request was denied on November 4, 2024. Exhibit 1, Exhibit 4 at 12. The rationale for denial was that Appellant's needs can be met in an assisted living facility with memory care, and the interdisciplinary team (IDT) would review Appellant's medications. Exhibit 4 at 13.

Upon receiving Appellant's request for LTC, Appellant's providers conducted evaluations and the IDT completed a long-term assessment. *Id*. at 23-25. According to the long-term assessment, Appellant has had cognitive decline since enrollment. In July 2024, Appellant was paranoid and exit-seeking at her home, which resulted in medication change. Appellant's exit-seeking behaviors continued, and Appellant's representative installed locks on doors and cameras for safety. *Id*. at 23. Appellant's representative requested coverage for LTC with concerns that she cannot keep Appellant safe in the home. Appellant no longer recognizes her family and is fearful. Appellant is afraid of using the stair lift to exit the home. *Id*.

The long-term care assessment tool identified barriers to Appellant's remaining safe in the community and proposed solutions. *Id*. at 24. Barriers included Appellant's need for supervision due to wandering and hallucinations, which increase when Appellant does not see anyone. Since enrollment, Appellant has exhibited accusatory behaviors with agitation towards targeted people, which are unpredictable and random. *Id*. The identified solution to this barrier is a willing caregiver who can provide supervision and assistance with the ability to understand dementia progression with behaviors and intervene as needed. *Id*. For assistance with ADLs, Appellant requires a willing caregiver to provide supervision and assistance with ADLs and mobility. *Id*. For Appellant's elopement risk and her cognitive decline, she requires an environment that is secure with caregivers who are trained to manage behaviors. *Id*.

Respondent's attorney discussed the records that had been part of the decision making process at the time of the appeal. On November 1, 2024, Respondent's nurse practitioner conducted an LTC evaluation. *Id*. at 14-18. Notable from this assessment is that Appellant is a high elopement risk during her angry or agitated behaviors. *Id*. at 14. Though Appellant was calm and cooperative at the visit, the reviewer noted that Appellant would benefit from a more supervised environment. *Id*. at 17. Appellant's dementia and Alzheimer's were no longer stable but were listed as "sub-optimal control." *Id*. at 14. A nursing assessment indicated that Appellant experiences intermittent agitation and anger, and occasionally becomes delusional. *Id*. at 21. A PT assessment indicated that

Appellant ambulates slowly while supervised between 100-300 feet with her rolling walker and is at her baseline needing verbal cues for tasks. *Id*. at 22. The OT assessment indicated that Appellant requires a one-person assist for all ADLs and verbal cues for encouragement and initiation. *Id*. at 90. The OT noted fluctuations due to cognitive impairment. *Id*.

On November 19, 2024, Appellant's representative appealed Respondent's initial denial of LTC coverage. *Id*. at 7. In response to Respondent's assertion that Appellant's medications must be reviewed, Appellant's representative wrote that Appellant's medications have been changed multiple times with no benefits, causing increased incontinence and further agitation. *Id*. In response to Respondent's assertion that community options are available, Appellant's representative wrote that Respondent has failed to provide community options. Appellant has been on a waitlist for an in-home personal care attendant (PCA) since January. Respondent has failed to provide support on Saturdays via PCA or adult day health (ADH) as approved and promised. Appellant is at a high level of stress being moved to and from the PACE clinic, causing panic attacks. Appellant's representative wrote that Appellant requires 24/7 assistance with her ADLs and cannot be left alone in a room while awake. Appellant is at a high risk of falls due to agitation during sleeping hours. Appellant is awakening multiple times each night. *Id*.

On November 24, 2024, Respondent denied Appellant's appeal, as the IDT had determined that additional time was needed to evaluate Appellant's recent medication changes. *Id*. at 8. In addition, all community options including Assisted Living Facility (ALF) with memory care and Adult Foster Care (AFC) have not been tried prior to LTC placement. *Id*. at 8, 35. Respondent concluded that according to the CMS manual for PACE programs, chapter 6, section 70 (excluded services), Appellant's request was an excluded service as it was not authorized by the IDT and not an emergency service. *Id*. at 8, 47. Respondent's attorney argued that since LTC was denied, on January 23, 2025, Appellant was offered an open bed in an adult foster care (AFC) setting. Appellant's representative declined this placement. *Id*. at 93.

Additional records were reviewed after Respondent denied the request. From [redacted] through [redacted], Appellant was admitted to a skilled nursing facility for a urinary tract infection. Respondent argued that Appellant was pleasant and had no unwanted behaviors. Exhibit 4 at 58, 60. The facility's records show that Appellant exhibited a range of behaviors. At times she was pleasant with no unwanted behaviors, but at other times she required redirection and became confused, weepy, agitated, violent, and abusive. Appellant frequently required redirection with tasks for which she requires assistance, such as transfers and ambulation. Exhibit 4 at 58-62.

Respondent's attorney and representative asserted that Appellant has had very little change from her enrollment in January 2024 to the assessments done in December 2024 and January 2025. *Id*. at 79-83. According to a PT assessment performed December 16, 2024, Appellant required a wheelchair transport to the PACE clinic. Appellant ambulated with her rolling walker with supervision for navigation. Appellant required assistance using the chair lift at home and was undergoing cognitive changes that impact her functional mobility skills. The PT noted that

Appellant was unable to follow fall prevention recommendations. *Id*. at 86. According to an OT assessment on December 16, 2024, Appellant required a one-person assist for ADLs. Appellant was independent with eating with set-up assistance and supervision, and assistance with toileting in the form of verbal cues and occasional minimal to moderate assistance depending on her anxiety. For mobility, Appellant required supervision with her rolling walker. The OT noted that Appellant can become anxious but is redirected easily and was pleasant at the assessment. OT was not indicated and Appellant was at baseline. *Id*. at 81-82.

Respondent's representative maintain that Appellant can be safely served in the community with a willing caregiver, as indicated by Appellant's acceptance to an AFC placement. Appellant was an elopement risk when she joined and safety measures were put into place. Respondent's representative testified that Appellant can be safe in the community even though she requires monitoring and assistance with ADLs. There are participants of PACE who require Hoyer lifts or total feeding assistance who are cared for safely in the community. Additionally, Appellant would be safely served in an ALF with a memory care unit. Appellant applied for one such placement but was found to be not suitable. However, other facilities are available in the community.

Appellant's attorney argued that the IDT plays God and has an absolute right to decide, with no overreach or monitoring, that someone is not suitable for LTC no matter how ludicrous that decision is. Appellant's attorney argued that it was the first time he was learning that there were other ALF with memory care units that would accept Appellant, as she had been denied placement.

Appellant's representative paid out of pocket for a second opinion of Appellant's ADL functioning. Appellant's attorney argued that this evaluation shows that Appellant cannot function on her own. This evaluation, dated February 3, 2025, showed that Appellant was oriented to person only. Exhibit 9. Appellant was severely cognitively impaired when it came to following commands and needed consistent redirection. *Id*. For feeding, Appellant required supervision for finger foods and assistance with non-finger foods. Appellant required maximum assistance for upper-body dressing and was dependent for lower-body dressing. Appellant required maximum assistance for grooming. Appellant refuses to shower so she required maximum assistance with a sponge bath. For toileting, Appellant was listed as dependent for clothing management and hygiene and a moderate assist for toilet transfers. *Id*. For bed mobility, Appellant required maximum assistance and at times needed a two-person assist, especially to assist with lower extremities in and out of the bed. For bed transfers, Appellant required moderate assistance (26-75%) with two people. The evaluator commented that Appellant required simple one-step commands and tactile cues to lean forward. Appellant benefited from elevated bed and a two-person assist as Appellant had posterior lean. *Id*.

Appellant's representative testified that she has been caring for Appellant for four years. Appellant's representative testified that in the past year, Appellant's ability to ambulate and toilet have declined. Appellant is fully dependent for toileting and requires assistance on and off the

toilet. She is incontinent. Mentally, Appellant has suffered from anxiety and depression her whole life. Her Alzheimer's experience involves constant delusion and confusion. She is upset, weeping three to four times per night. Appellant cannot feed or dress herself. Appellant's representative testified that if she leaves the room for five minutes, Appellant has a panic attack. Appellant needs to be around people constantly. Appellant's representative does not understand how Respondent can declare that Appellant is a one-person assist in daily needs, which is not true.

Appellant's representative argued that she declined the AFC placement offered by Respondent because the setting was inappropriate. The placement would have Appellant in a room by herself and not in a community setting. Appellant would have no general area to sit with other people and would have to watch television by herself in her room. Appellant's representative argued that one person cannot provide care for Appellant. Appellant's representative argued that Appellant's current living situation is an AFC placement and it is not working. Having Appellant live in a room in a stranger's home is also not going to work, and will cause Appellant additional stress and trauma.

Appellant's attorney argued that the second reason Respondent offered for denial, time to evaluate Appellant's medications, is entirely subjective with no baseline for determination. Appellant's representative has asked how long it would take to evaluate the changes and has not been given a response. Providers contracted through Respondent, including Appellant's PCP and psychiatrist, have refused to put anything in writing to Appellant's representative regarding medication changes. Appellant's representative testified that Appellant is currently on Seroquel, an anti-psychotic, and all other medication changes have been exhausted. Appellant's attorney argued that Respondent is not being truthful or transparent to Appellant or her representative.

Regarding options in the community, Appellant's attorney argued that the AFC placement offered by Respondent was not appropriate and Appellant was rejected from an ALF placement in [redacted]. Appellant's attorney argued that there is no place in the community appropriate for Appellant and she requires LTC. Appellant's attorney asserted that if Appellant was hospitalized, she would not be allowed to go home and a physician would require a LTC placement. Appellant's attorney asserted that Appellant has luckily not fallen, but Appellant could easily stumble and fall when she is trying to elope.

Appellant's representative testified that at the time of enrollment, the PACE program seemed like a good option. Appellant enjoyed the PACE clinic day program. However, Appellant can no longer mentally or physically handle the clinic. Appellant becomes stressed about transportation and has high agitation and anxiety when she attends the day program. When she returns home in the afternoon, she cries and can barely walk 20 feet to go to the bathroom. The van ride home takes almost an hour and Appellant is a "hot mess" when she gets home. Appellant's representative testified that Appellant had a fall in December 2024 because she was exhausted from her day in the PACE clinic. The day program is no longer beneficial for Appellant.

Appellant's representative testified that Respondent had promised to approve additional support

for Appellant in the home in January, but heard nothing until last week. Appellant's representative testified that Respondent had offered 9 hours per week, including an hour in the morning to help Appellant get ready for the day program and 4 hours on Saturdays. Appellant's representative questioned the timing of the approval of this assistance one week prior to the hearing. Appellant's representative testified that she sought these services in addition to the AFC caregiver fund she receives, but Respondent denied this request. Respondent's representative testified that Appellant would not qualify for both the paid caregiver program and home services program because that would be double dipping. Currently, Appellant's representative is a paid caregiver and is given a stipend to use towards Appellant's care. Appellant's representative may use the funds to pay herself or pay an additional caregiver. Appellant could have home care services in lieu of the paid caregiver program.

Appellant's representative argued that Respondent's representatives do not evaluate Appellant in the home but rather conduct assessments while Appellant is at the ADH facility. Appellant is not evaluated when she is waking up or going to bed, so Respondent has no idea what happens. These are the times she has the most difficulty.

In summary, Appellant's representative argued that Appellant has exhausted medication options, has been denied an ALF memory care placement, and is no longer appropriate for AFC. Appellant's participation in her day program is no longer beneficial due to the stress and exhaustion she experiences, and her movement to and from the day program creates additional risk for falling. Respondent has not assisted Appellant in this process and its providers refuse to put information in writing.

Appellant's representative testified that she has reached out to 13 LTC facilities in the area and cannot get a call back. Appellant's representative understands that the facilities are overpopulated and have long waiting lists. Further, Appellant's doctors refuse to acknowledge that Appellant requires long-term care and refused to provide a prescription for the independent OT evaluation, which hinders their search.

Respondent's representative argued that all PACE participants are nursing home eligible; the PACE program is an alternative to nursing home care. Respondent's representative argued that an independent OT evaluating Appellant one time will likely see the worst, but the OT in the IDT knows Appellant and has a better understanding of her needs. Appellant was evaluated by the IDT's OT and PT the day prior to hearing, and their determination contradicts the independent evaluator. Respondent provided copies of these assessments performed on February 11, 2025. Exhibit 8. Both were done in the home before Appellant got out of bed. According to the OT, Appellant required a one-person assist with all ADLs, including maximum assistance for toileting with clothing management and hygiene. Appellant was able to ambulate to the toilet with cues. Appellant required moderate-to-maximum assistance for lower body dressing. For feeding, Appellant required assistance with cueing and minimizing distraction. Appellant exhibited anxiety with tasks resulting in discomfort. *Id*. According to the PT, Appellant was able to transfer out of

bed with one person providing minimal assistance, although Appellant's representative noted that it normally takes two people. The PT noted that Appellant was able to transfer sitting to standing with supervision and cues. Appellant required moderate assistance to stand from the recliner and needed verbal cues for directions during the assessment. Appellant was cooperative. *Id*. Appellant was experiencing stomach issues during the assessments, so not all elements were assessed. *Id*. The PT noted that Appellant was a one-person assist for transfers, bed mobility, and functional transfers. Appellant is receiving PT services at the PACE and is a one-person assist with transfers and ambulation with her rolling walker. *Id*.

Appellant's representative testified that Appellant does not have funds for a memory care facility privately, which may charge approximately $12,000 a month. Appellant's representative argued that the cheapest ALF with memory care would cost $7,000 per month out of pocket, which Appellant cannot afford. Respondent's representative testified that PACE pays a stipend for personal care but the remainder of the payment, such as housing costs, is up to the participant. Respondent's representative argued that financial cost is not a consideration when weighing the community options available to participants, but argued that the AFC program is a less costly option.

The hearing record was held open through February 28, 2025 for the parties to exchange additional information and provide a written response to exchanged information. Exhibit 5. Respondent's attorney did not submit a response.

Appellant's attorney did not provide any written response to Respondent's materials, but provided two additional records. Appellant's representative provided a note from her own physician regarding medical conditions that impact her ability to care for Appellant. Exhibit 7. Appellant's representative also submitted a note from Appellant's visit to her neurologist on February 26, 2025. The neurologist wrote that Appellant has moderate to severe dementia complicated by behavior disturbance with psychotic thought content, anxiety, and agitation. Exhibit 6. The neurologist wrote that it is likely that underlying psychological issues are interacting with her dementia to create quite a bit of distress for Appellant and her daughter as caregiver. *Id*. The neurologist noted that the transportation routine going back and forth to day programming is disruptive and causing distress. The neurologist wrote that the goal of ensuring Appellant's safety and quality of life would be best achieved in a memory care unit at a skilled facility, where the transitions back and forth from home would not be triggering and creating difficulty. This would be in Appellant's best interest. *Id*. The neurologist did not recommend specific medication changes and noted that Appellant's current dose of Seroquel provides some control of her anxiety and comfort. *Id*.

Findings of Fact

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

1. Appellant has been enrolled in Respondent's PACE program since January 1, 2024.

2. Appellant is in her late seventies with medical conditions including Alzheimer's dementia with behaviors, stage 3 chronic kidney disease (CKD), history of breast cancer, history of cerebrovascular accident (CVA), carpal tunnel syndrome, and hypertension. *Id*. at 23, 68.

3. In January 2024, Appellant was living with her daughter/appeal representative as a paid caregiver in an in-law apartment on the second floor of the home with a stair lift. Appellant attended the PACE program two times per week and was never left home alone. *Id*. at 67, 75, 77-78.

4. Appellant's chronic conditions were stable at the time of enrollment, and she had no hospitalizations since December 2022. *Id*. at 67-68.

5. In January 2024, Appellant required supervision for all of her ADLs, including minimum/moderate assistance with self-care, supervised feeding, minimal assistance and reminders for toileting and occasional incontinence, and close supervision and assistance with mobility with her walker. She was not indicated for OT at the time. *Id*. at 77-78.

6. In January 2024, Appellant could ambulate with her walker at a steady appropriate pace and needed cues and supervision. She was not indicated for PT. *Id*. at 83.

7. On June 21, 2024, Appellant's PCP noted at a semiannual evaluation that Appellant attended the PACE program five days per week. Appellant's chronic conditions were stable. *Id*. at 26-34.

8. On October 30, 2024, Appellant's representative requested coverage of LTC on Appellant's behalf. Exhibit 4 at 12.

9. On November 4, 2024, Respondent denied the request, finding that Appellant's needs can be met in an ALF with memory care, and stating the IDT would review Appellant's medications. Exhibit 1, Exhibit 4 at 12-13.

10. On November 19, 2024, Appellant's representative appealed Respondent's initial denial of LTC coverage. Exhibit 4 at 7.

11. On November 24, 2024, Respondent denied Appellant's appeal, as the IDT had determined that additional time was needed to evaluate Appellant's recent medication changes. In

addition, all community options including ALF Memory Care and AFC have not been tried prior to LTC placement. Exhibit 1, Exhibit 4 at 8, 35.

12. Appellant filed a timely request for fair hearing with BOH on December 26, 2024. Exhibit 2.

13. On November 1, 2024, Respondent's nurse practitioner conducted an LTC evaluation. The NP noted that Appellant is a high elopement risk during her angry or agitated behaviors. Although Appellant was calm and cooperative at the visit, the NP noted that Appellant would benefit from a more supervised environment. Appellant's dementia and Alzheimer's were no longer stable but were listed as "sub-optimal control." *Id*. at 14-18.

14. On November 1, 2024, a nursing assessment indicated that Appellant experiences intermittent agitation and anger and occasionally becomes delusional. *Id*. at 21.

15. On November 1, 2024, the PT assessment indicated that Appellant ambulates slowly while supervised between 100-300 feet with her rolling walker and is at her baseline needing verbal cues for tasks. *Id*. at 22.

16. On November 1, 2024, the OT assessment indicated that Appellant requires a one-person assist for all ADLs and verbal cues for encouragement and initiation. *Id*. at 90. The OT noted fluctuations due to cognitive impairment. *Id*.

17. According to a PT assessment conducted on December 16, 2024, Appellant required a wheelchair transport to the PACE clinic five days per week. Appellant ambulates with her rolling walker with supervision for navigation. Appellant required assistance using the chair lift at home and was undergoing cognitive changes that impact her functional mobility skills. The PT noted that Appellant was unable to follow fall prevention recommendations. *Id*. at 86.

18. According to an OT assessment conducted on December 16, 2024, Appellant required a one-person assist for ADLs. Appellant was independent with eating with set-up and supervision, and assistance with toileting in the form of verbal cues and occasional minimal to moderate assistance depending on her anxiety. For mobility, Appellant required supervision with her rolling walker. The OT noted that Appellant can become anxious but is redirected easily and was pleasant at the assessment. OT was not indicated and Appellant was at baseline. *Id*. at 81-82.

19. From [redacted] through [redacted], 2025, Appellant was admitted to a skilled nursing facility for a urinary tract infection. The records show that Appellant exhibited a range of behaviors. At times she was pleasant with no unwanted behaviors, but at other times required redirection and became confused, weepy, agitated, violent, and abusive. Appellant

frequently required redirection with tasks for which she requires assistance, such as transfers and ambulation. *Id*. at 58-62.

20. On January 23, 2025, Appellant was offered an open bed in an AFC setting in another home. Appellant's representative declined this placement. *Id*. at 93.

21. Appellant applied for placement at an ALF with memory care unit but was rejected.

22. On February 11, 2025, Appellant underwent new OT and PT evaluations. According to the OT, Appellant required a one-person assist with all ADLs, including maximum assistance for toileting with clothing management and hygiene. Appellant was able to step to the toilet with cues. Appellant required moderate-to-maximum assistance for lower body dressing. For feeding, Appellant required assistance with cueing and minimizing distraction. Appellant exhibited anxiety with tasks resulting in discomfort. Exhibit 8.

23. According to the PT, on February 11, 2025, Appellant was able to transfer out of bed with one person providing minimal assistance, though Appellant's representative noted that it normally takes two people. The PT noted that Appellant was able to transfer sitting to standing with supervision and cues. Appellant required moderate assistance to stand from the recliner and needed verbal cues for directions during the assessment. Appellant was cooperative. Appellant was experiencing stomach issues during the assessments, so not all elements were assessed. The PT noted that Appellant was a one-person assist for transfers, bed mobility, and functional transfers. Appellant is receiving PT services at the PACE and is a one-person assist with transfers and ambulation with her rolling walker. *Id*.

24. On February 26, 2025, Appellant's neurologist wrote that Appellant has moderate to severe dementia complicated by behavior disturbance with psychotic thought content, anxiety, and agitation. It is likely that underlying psychological issues are interacting with her dementia to create quite a bit of distress for Appellant and her daughter as caregiver. The neurologist noted that the transportation routine going back and forth to day programming is disruptive and causing distress. The neurologist wrote that the goal of ensuring Appellant's safety and quality of life would be best achieved in a memory care unit at a skilled facility where the transitions back and forth from home would not be triggering and creating difficulty. The neurologist did not recommend specific medication changes and noted that Appellant's current dose of Seroquel provides some control of her anxiety and comfort. Exhibit 6.

Analysis and Conclusions of Law

The Program of All-inclusive Care for the Elderly (PACE) is a federal program administered by state Medicaid agencies, including MassHealth, to provide a wide range of medical, social, recreational, and wellness services to eligible participants. The goal of PACE is to allow participants to live safely

in their own residences as long as medically and socially feasible. 42 USC § 460.4(b). Federal and state regulations govern the PACE program.

According to MassHealth's regulations, 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). As part of the PACE program,

> (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.

In determining PACE eligibility, 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.

130 CMR 519.007(C)(2).

A PACE organization must "[e]stablish an interdisciplinary team … at each PACE center to comprehensively assess and meet the individual needs of each participant." 42 CFR § 460.102(a)(1). Generally, a PACE participant is entitled to all of the Medicare- and Medicaid-covered items and services that they would receive if not enrolled in the PACE plan. 42 CFR § 460.92. However, the IDT is given broad latitude to assess a participant's needs for particular services. *See* 42 CFR §§ 460.102-460.106. They also have the authority to determine excluded services pursuant to 42 CFR § 460.96:

The following services are excluded from coverage under PACE:

(a) **Any service that is not authorized by the interdisciplinary team**, **even if it is a required service**, unless it is an emergency service.

42 CFR § 460.96.

The IDT must promptly develop a comprehensive plan of care for each participant. The plan of care must meet the following requirements:

> (i) The interdisciplinary team members specified in § 460.102(b) must develop, evaluate, and if necessary, revise a comprehensive person-centered plan of care for each participant.
> (ii) Each plan of care must do all of the following:
> (A) Take into consideration the most current assessment findings.
> (B) Identify the services to be furnished to attain or maintain the participant's highest practicable level of well-being.

42 CFR § 460.106(a).

The regulations require the IDT to review all recommendations made by, *inter alia*, PACE providers and determine if the recommended services are necessary to meet Appellant's medical, physical, social, and emotional needs. 42 CFR 460.106(d)(1)(iv). The IDT members are responsible for remaining alert to pertinent input from any individual with direct knowledge of Appellant, including caregivers, specialists, and designated representatives. 42 CFR 460.106(d)(2)(ii).

Federal regulation 42 USC § 460.112 sets forth the rights to which participants are entitled in the PACE program. Included in these rights are the participant and representative's right to written disclosure of services available from the PACE organization to make informed choices. 42 USC § 460.112(c). Participants may also choose their primary care physician and specialists from within the PACE network, and

> (4) To receive necessary care in all care settings, up to and **including placement in a long-term care facility when the PACE organization can no longer provide the services necessary to maintain the participant safely in the community**.
>
> (5) To disenroll from the program at any time and have such disenrollment be effective the first day of the month following the date the PACE organization receives the participant's notice of voluntary disenrollment as set forth in § 460.162(a).

42 USC § 460.112(d) (emphasis added)

At issue in this appeal is whether Respondent was correct in denying Appellant's request for LTC placement. Under 42 USC § 460.112(d)(4), LTC placement is necessary "when the PACE organization can no longer provide the services necessary to maintain the participant safely in the community."

Respondent denied Appellant's LTC placement, citing both the need for more time to evaluate medication changes and that Appellant has not exhausted community based options, such as AFC or an ALF with a memory care unit. Respondent also argued that PACE is a voluntary program from which Appellant is free to disenroll at any time, and that Appellant would meet eligibility criteria for PACE if she were to enroll presently. Appellant's side argued that Appellant is not safely served in her current placement and that LTC is the only viable option for her care.

The objective medical records submitted for hearing demonstrate that Appellant's clinical status has deteriorated. As documented by the PCP and the NP, Appellant's dementia was stable at the outset of enrollment but is now sub-optimal. The NP found recommended a more supervised environment for Appellant. In addition, Appellant's neurologist recommended a skilled facility with memory care as the safest option for Appellant. Staff at the day clinic Appellant attends have noted a decline in her cognition. Finally, even by Respondent's measures, Appellant requires more support with ADLs than at the time of her enrollment.

Respondent did not provide evidence to support its decision that Appellant could be safely served in the community after reviewing medication changes. Respondent effectively abandoned that position by not addressing it adequately at hearing and with records.

Respondent's other rationale for denying Appellant's request was that other community options that could safely serve Appellant's needs have not been exhausted. Respondent specifically identified AFC and an ALF with a memory care unit as viable community alternatives. Respondent emphasized that Appellant was accepted into an AFC placement that Appellant's representative declined. However, Appellant's representative offered compelling testimony that the offered placement would not be suitable for Appellant medically or socially. Further, Appellant's representative testified that the AFC placement offered by Respondent was, at best, a lateral move from her current placement, however in a stranger's home, as opposed to her daughter's home. As provided above, the records have shown that Appellant's conditions have deteriorated in her current placement. Appellant's representative's position that AFC is not a safe environment is corroborated by the objective records, as both the NP and neurologist recommended that Appellant be in a more supervised environment than her current circumstances.

Regarding the ALF option, Appellant was rejected from one such placement. Furthermore, Appellant's representative offered compelling testimony why the other ALFs identified by Respondent would not be suitable as they would be unaffordable to Appellant. Respondent did not dispute Appellant's testimony regarding costs but argued that finances are not a consideration in identifying available community options. However, in order to be eligible for PACE, an individual

must have below $2,000 in assets and no more than a monthly income of 300% of the FBR (or $2,901 in 2025). 130 CMR 519.007(C)(2). Pursuant to 42 CFR 460.106(d)(2)(ii), the IDT should consider whether or not a proffered alternative to LTC, such as memory care ALF, is a financially available option for a participant. When asked directly about this at hearing, Respondent's representative fell back on arguing that the AFC placement that was offered was a less costly alternative. Again, Appellant's position that an AFC is no longer a safe placement is supported by the objective records.

The record supports Appellant's position that AFC placement is no longer a safe option, as both the PACE NP and Appellant's neurologist recommend a more supervised setting. Appellant was rejected by one memory care ALF and priced out of acceptance to others. As Respondent has not identified viable community options that could safely serve Appellant in the community pursuant to its obligations under the regulations, this appeal is approved.

Order for Respondent

Determine Appellant eligible for long-term care.

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, at the address on the first page of this decision.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: Appellant Attorney: [redacted]

cc: Appellant Representative: [redacted]

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