Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2501873
Decision Date:	04/11/2025	**Hearing Date:**	March 06, 2025
Hearing Officer:	Brook Padgett	**Record Closed:**	March 27, 2025

Appellant Representative:

[redacted]

PACE Representatives:
Kathyrn Tylander, CHA Compliance and Quality Manager
Sue Donnelly, CHA Appeals Supervisor
Jonathan Burns, MD, CHA Medical Director

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

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Program for All-Inclusive Care for the Elderly (PACE)
Decision Date:	04/11/2025	**Hearing Date:**	March 06.2025
MassHealth's Rep.:	K. Tylander, PT, DPT	**Appellant's Rep.:**	Pro se
Hearing Location:	Quincy Harbor South Tower		

Authority

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

Jurisdiction

On January 09, 2025, the Elder Service Plan (ESP) of Cambridge Health Alliance (CHA), MassHealth's agent for participants in the Program of All-Inclusive Care for the Elderly (PACE), informed the appellant that an independent review of her first level appeal has upheld the denial of continued short-term rehabilitation services. (Exhibit 1). The appellant filed this appeal timely with the Board of Hearings on January 29, 2025. (130 CMR 610.015(B)); (Exhibit 2). A PACE organization's decision to limit or deny requested services is grounds for appeal. (130 CMR 610.032(B)).[1]

Action Taken by Cambridge Health Alliance

CHA intends to discontinue short-term rehabilitation.

[1] Pursuant to 130 CMR 519.007(C)(1), the PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. (a) A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals. (b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP). (c) Persons enrolled in PACE have services delivered through managed care. (i) in day-health centers; (ii) at home; and (iii) in specialty or inpatient settings, if needed.

Issue

Did CHA correctly deny the appellant's request for continued short-term rehabilitation services?

Summary of Evidence

CHA was represented at hearing by the compliance and quality manager who testified that the appellant's worsening chronic conditions and hospitalizations have led to a decrease in her overall mobility. The representative argued that after a review of the medical evidence the Interdisciplinary team (IDT) determined the appellant is dependent on a skilled nursing facility due to her inability to safely live in her apartment. The IDT recommended the appellant be denied continuous short-term care and be approved transition to long-term care services.

The representative stated the CHA PACE program provides the appellant benefits via an Enrollment Agreement authorized by MassHealth. The agreement provides that:

> If at anytime the interdisciplinary team decides with you and your caregiver/family that you can no longer be cared for safely in your home, you may need to be admitted to a nursing facility. This may be for a short period of time or, if necessary it may be for long term residency.

The representative testified that, after an evaluation on December 16, 2024 the PACE IDT determined the appellant was not able to safely return to her home. Since starting rehab on September 01, 2024, the appellant has continued to require extensive help with all self-care and mobility tasks. This includes requiring two people for transfers and assistance with ostomy maintenance. CHA argues this is more support than she can receive in a community setting. The appellant previously lived in the community with 35 hours a week of assistance and was at the time independent with toileting transfers and walked with the aid of an assistive device in her apartment. IDT notes the appellant has not made sufficient gain to return to this level of independence. CHA stated since November 14, 2023, (other than 102 days between May 13, 2024, and August 22, 2024), the appellant has been in a skilled nursing facility or the hospital; she has spent 196 days in the hospital or short-term rehab since August 22, 2024. Medical notes indicate the appellant's health has been affected by viral infections, abdominal issues, the need for an ileostomy procedure and an ICU stay. Progress Notes dated December 16, 2024, indicate the appellant has made only minimal progress while in rehab. The appellant has deconditioned[2] and is only able to stand briefly with parallel bars. The appellant requires a Hoyer lift for transfers out of her bed and is unable to toilet herself or manage her ostomy care due to her limited mobility. The

[2] Deconditioning syndrome is a condition in which a patient falls into a cycle of not exercising following an injury or traumatic event.

representative further argued there is a question regarding the state of the appellant's apartment as it is very cluttered and in its present state the appellant would be unable to move in her apartment with the use of a wheelchair. Progress Notes dated February 11, 2025 indicate the appellant has developed right leg cellulitis and continues to require hands-on assistance to stand, walk, bathe, dress and ostomy care. CHA submitted into evidence a letter of denial of short-term coverage and Enrollment Agreement. (Exhibit 4, pgs.1-100).

The appellant responded that she has really improved since the IDT review. The appellant stated she wished to leave the rehab and return to the community and her apartment. The appellant maintained she can independently use the toilet and manage her ostomy bag. The appellant stated she understands she needs to clean out her apartment but insists that with a wheelchair and other assistive devices like a shower seat she should be able to return home. The appellant stated she doesn't belong in the rehab as there are lots of sick people there and the staff has very poor response times.

The facility OT testified that the appellant is very motivated to leave the facility and has been able to walk 100 feet independently with an assistive device. The appellant is independent in dressing and toileting and has been able to care for her ostomy bag with minimal assistance.

The hearing officer left the record open until March 21, 2025, for the appellant to provide additional documentation (such as OT or Physical Therapy (PT) notes or any other medical documentation) that demonstrates she should remain in a short-term care facility; and March 27, 2025 for CHA to respond to the additional information. (Exhibit 5).

The appellant submitted within the required time limits the following: OT/PT notes dated February 26, 2025 to March 10, 2025. (Exhibit 6); Admission Records including OT notes dated February 26, 2025 to March 17, 2025, PT notes dated February 26, 2025 to March 14, 2025, and Progress Notes dated March 19, 2025. (Exhibit 7).

OT Notes - March 10, 2025: "Logistics of return home, [the appellant] shared that she plans to hire people at night to provide care around the clock. Team acknowledged that staffing is a major challenge in community setting, especially for overnight hours." March 03: "seems to participate as minimally as possible yet insists she is working very hard. It appears that she plans to rely heavily on aid support for ADL upon returning home as opposed to relying on independence with things like toileting, clothing management… does not initiate self-care. February 26: "[A]ppears to be some level of learned helplessness and or disconnection between what [the appellant] can and cannot do on her own, which could be related to anxiety, comorbidities and extended time in a facility. … struggles maintaining consistent ability to initiate self-care needs and relies heavily on external supports which would be challenging to maintain in the community." (Exhibit 6).

OT Notes - March 17, 2025: "performed supine D1 flexion/extension, sD2 flexion/extension, shoulder abduction and elbow flexion x 3 - 10 reps for increase strength and ROM for tasks." March 14: "greeted supine in bed D1 flexion/extensionsD2 flexion/extensions, elbow flexion

shoulder abduction and x 3 - 10 reps to facilitate an increase in ROM and endurance for ADL. Required rest breaks in between sets." March 13: "greeted supine, shoulder D1 flexion/extensions D2 flexion/extension, shoulder abduction and elbow flexion x 3 - 10 reps for increase ROM for tasks. Required minimum verbal cues for technique and required rest breaks in between sets." (Exhibit 6).

PT Notes - March 14, 2025: "Lower extremities exercises on supine to increase strength for safe ambulation and transfers, performed one set of all four exercises before resting and repeating." March 13: "Lower extremities exercises on supine to increase strength for safe ambulation and transfers, performed one set of all four exercises before resting and repeating." March 11: "good tolerance to exercise, nominal rest breaks necessary between sets – limited ROM, SLR good ability to perform in available ROM no complaints of pain." March 07: "good ability to use upper extremities to facilitate bed mobility and use of her low extremities good tolerance to siting in wheelchair for 4+ hours." March 04: "greeted sitting needed assistance going to restroom. Observed emptying ostomy bag, able to wipe bag and surrounding area with minimal staff assistance. Reported feeling much stronger." (Exhibit 6).

Progress Notes - March 29, 2025: "alert, verbally responsive and able to make needs known … denied pain or discomfort … no respitory distress, SOB noted. [C]olostomy bag intact with normal output… [S]afety measures maintained." (Exhibit 7).

PACE responded to the appellant's most current PT and OT notes indicate the appellant "is only engaging in bed level exercise. The PACE team continues to support an end to short term rehabilitation services… ." (Exhibit 8).

Findings of Fact

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

1. The appellant is enrolled in CHA ESP PACE. (Testimony).

2. September 01, 2024, the appellant entered rehab. (Testimony).

3. Since entering rehab, the appellant has continued to require extensive help with all self-care and mobility tasks, including requiring two people for transfers and assistance with ostomy maintenance. (Exhibit 4 , testimony, pg. 37).

4. The appellant previously lived in the community with 35 hours a week of assistance and was independent with toileting transfers and walked with the aid of an assistive device in her apartment. IDT noted she has not made sufficient gain to return to this level of independence. (Testimony).

5. December 16, 2024 Progress Notes indicate the appellant has made minimal progress with rehab. The appellant is deconditioned and is only able to stand briefly with parallel bars. (Exhibit 4, pgs.37-40).

6. The appellant requires a Hoyer lift for all transfers and is unable to toilet herself. (Exhibit 4, pg.39).

7. December 16, 2024 the PACE IDT determined the appellant is not able to safely return to her home. (Exhibit 4, pgs.37-40).

8. December 27, 2024, IDT letter determined the appellant is dependent on a skilled nursing facility due to her inability to safely live in her apartment. (Exhibit 4, pg.46).

9. December 27, 2024, IDT letter recommends the appellant be denied continuous short-term care and be approved transition to long-term care services. (Exhibit 4, pg.46).

10. February 11, 2025, Progress Notes indicate the appellant developed right leg cellulitis and continues to require hands on assistance to stand, walk, bathe, dress, and ostomy care. (Exhibit 4, pg.62).

11. February 26 - March 10, 2025, OT Notes state "Logistics of return home, [the appellant] shared that she plans to hire people at night to provide care around the clock. Team acknowledged that staffing is a major challenge in community setting, especially for overnight hours." [Appellant] "seems to participate as minimally as possible yet insists she is working very hard. It appears that she plans to rely heavily on aid support for ADL upon returning home as opposed to relying on independence with things like toileting, clothing management. [The appellant] does not initiate self-care. [A]ppears to be some level of learned helplessness and or disconnection between what [the appellant] can and cannot do on her own, which could be related to anxiety, comorbidities and extended time in a facility. [S]truggles maintaining consistent ability to initiate self-care needs and relies heavily on external supports which would be challenging to maintain in the community." (Exhibit 6).

12. March 07-14, 2025, PT Notes state, "Lower extremities exercises on supine to increase strength for safe ambulation and transfers, performed one set of all four exercises before resting and repeating." "[G]ood tolerance to exercise, nominal rest breaks necessary between sets – limited ROM, SLR good ability to perform in available ROM no complaints of pain." "[G]ood ability to use upper extremities to facilitate bed mobility and use of her low extremities good tolerance to siting in wheelchair for 4+ hours." "[G]reeted sitting needed assistance going to restroom. Observed emptying ostomy bag, able to wipe bag and surrounding area with minimal staff assistance. Reported feeling much stronger." (Exhibit 6).

13. March 13-17, 2025 OT Notes state "performed supine D1 flexion/extension, sD2 flexion/extension, shoulder abduction and elbow flexion x 3 - 10 reps for increase strength

and ROM for tasks." "[G]reeted supine in bed D1 flexion/extensions D2 flexion/extensions, elbow flexion shoulder abduction and x 3 - 10 reps to facilitate an increase in ROM and endurance for ADL. Required rest breaks in between sets." "[G]reeted supine, shoulder D1 flexion/extensionsD2 flexion/extension, shoulder abduction and elbow flexion x 3 - 10 reps for increase ROM for tasks. Required minimum verbal cues for technique and required rest breaks in between sets." (Exhibit 6).

14. March 29, 2025 Progress Notes state the appellant is "alert, verbally responsive and able to make needs known … denied pain or discomfort no … respitory distress, SOB noted. [C]olostomy bag intact with normal output… [S]afety measures maintained." (Exhibit 7).

15. The appellant has spent more than 411 days in the hospital or short-term rehab between November 14, 2023 and April 10, 2025.

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 519.007(C), "Individuals Who Would be Institutionalized," states as follows:

(C) Program of All-Inclusive Care for the Elderly (PACE).
(1) Overview. The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community.
(a) A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.
(b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).
(c) Persons enrolled in PACE have services delivered through managed care
(i) in day-health centers;
(ii) at home; and
(iii) in specialty or inpatient settings, if needed.
(2) Eligibility Requirements. In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status. The applicant or member must meet all of the following criteria:
(a) be 55 years of age or older;
(b) meet Title XVI disability standards if 55 through 64 years of age;
(c) be certified by the MassHealth agency or its agent to be in need of nursing-facility services;
(d) live in a designated service area;

(e) have medical services provided in a specified community-based PACE program;
(f) have countable assets whose total value does not exceed $2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: *Asset Reduction*; and
(g) have a countable-income amount less than or equal to 300 percent of the federal benefit rate (FBR) for an individual.

(3) Income Standards Not Met. Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*.

CHA administers PACE on behalf of MassHealth and is MassHealth's agent. As such, CHA is required to follow MassHealth laws and regulations, as well as federal laws and regulations governing PACE.

Pursuant to 130 CMR 450.204, and the MassHealth All Provider Manuals, MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "medically necessary" if:

(1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and

(2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007. (Emphasis added)

Pursuant to 42 Code of Federal Regulations (CFR) § 460.4, applicable to "Programs of All-Inclusive Care for the Elderly:"

Scope and purpose.

(a) *General.* This part sets forth the following:

(1) The requirements that an entity must meet to be approved as a PACE organization that operates a PACE program under Medicare and Medicaid.

(2) How individuals may qualify to enroll in a PACE program.

(3) How Medicare and Medicaid payments will be made for PACE services.
(4) Provisions for Federal and State monitoring of PACE programs.
(5) Procedures for sanctions and terminations.

(b) *Program purpose.* PACE provides pre-paid, capitated, comprehensive health care services designed to meet the following objectives:
(1) Enhance the quality of life and autonomy for frail, older adults.
(2) Maximize dignity of, and respect for, older adults.
(3) Enable frail, older adults to live in the community as long as medically and socially feasible.
(4) Preserve and support the older adult's family unit. (Emphasis added)

Next, according to 42 CFR § 460.150, "Eligibility to Enroll in a PACE Program:"

(a) General rule. To enroll in a PACE program, an individual must meet eligibility requirements specified in this section. To continue to be eligible for PACE, an individual must meet the annual recertification requirements specified in § 460.160.

(b) Basic eligibility requirement To be eligible to enroll in PACE, an individual must meet the following requirements:
(1) Be 55 years of age or older.
(2) Be determined by the State administering agency to need the level of care required under the State Medicaid plan for coverage of nursing facility services, which indicates that the individual's health status is comparable to the health status of individuals who have participated in the PACE demonstration waiver programs.
(3) Reside in the service area of the PACE organization.
(4) Meet any additional program specific eligibility conditions imposed under the PACE program agreement. These additional conditions may not modify the requirements of paragraph (b)(1) through (b)(3) of this section.

(c) Other eligibility requirements.
(1) At the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety.
(2) The State administering agency criteria used to determine if an individual's health or safety would be jeopardized by living in a community setting must be specified in the program agreement. (Emphasis added)

Moreover, 42 CFR § 460.152, "Enrollment Process," states as follows:

(a) Intake process. Intake is an intensive process during which PACE staff members make one or more visits to a potential participant's place of residence and the potential participant makes one or more visits to the PACE center. At a minimum, the intake process must include the following activities:

(1) The PACE staff must explain to the potential participant and his or her representative or caregiver the following information:
(i) The PACE program, using a copy of the enrollment agreement described in § 460.154, specifically references the elements of the agreement including but not limited to § 460.154(e), (i) through (m), and (r).
(ii) The requirement that the PACE organization would be the participant's sole service provider and clarification that the PACE organization guarantees access to services, but not to a specific provider.
(iii) A list of the employees of the PACE organization who furnish care and the most current list of contracted health care providers under § 460.70(c).
(iv) Monthly premiums, if any.
(v) Any Medicaid spenddown obligations.
(vi) Post-eligibility treatment of income.
(2) The potential participant must sign a release to allow the PACE organization to obtain his or her medical and financial information and eligibility status for Medicare and Medicaid.
(3) The State administering agency must assess the potential participant, including any individual who is not eligible for Medicaid, to ensure that he or she needs the level of care required under the State Medicaid plan for coverage of nursing facility services, which indicates that the individual's health status is comparable to the health status of individuals who have participated in the PACE demonstration waiver programs.
(4) PACE staff must assess the potential participant to ensure that he or she can be cared for appropriately in a community setting and that he or she meets all requirements for PACE eligibility specified in this part.

(b) Denial of Enrollment. If a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting, the PACE organization must meet the following requirements:

(1) Notify the individual in writing of the reason for the denial.
(2) Refer the individual to alternative services, as appropriate.
(3) Maintain supporting documentation of the reason for the denial.
(4) Notify CMS and the State administering agency in the form and manner specified by CMS and make the documentation available for review. (Emphasis added)

After an evaluation on December 16, 2024, CHA PACE, pursuant to its obligations under federal regulations, documented serious concerns regarding the appellant's ability to safely live in a community setting and initiated the termination of rehab service with the recommendation of long-term placement. CHA and the appellant's IDT made this decision based on the appellant's medical record and the appellant's worsening chronic conditions and hospitalizations which have

led to a decrease in her overall mobility and ability to care for herself. The appellant previously lived in the community receiving 35 hours a week of assistance, was independent with toileting transfers, and walked with the aid of an assistive device in her apartment. As of the time of CHA recommendation, the appellant had been in a skilled nursing facility or the hospital for more than 196 days (beginning November 14, 2023). While in rehab, the appellant has shown little improvement and has continued to require extensive help with all self-care and mobility tasks, including requiring two people for transfers, a Hoyer lift to get out of bed, and assistance with ostomy maintenance. CHA PACE concluded that the medical evidence demonstrates the appellant has not made sufficient gains to return to a level of independence to return to the community and requires long-term care.

To refute the IDT assessment, the appellant was given time to obtain the most current medical notes concerning her condition. The appellant submitted OT, PT and Progress Notes from March 13 – March 29 which state the appellant is feeling stronger and has made some gains, such as emptying ostomy bag and cleaning the bag and surrounding area with minimal staff assistance, walking 100 feet independently with an assistive device, and sitting in a wheelchair for 4+ hours.

Notwithstanding these improvements, there is insufficient medical evidence in the record to confirm that the appellant has returned to her baseline functioning so that it is safe for her to return to the community. Although most current notes state the appellant is very motivated to leave the rehab facility and has demonstrated good tolerance to exercise with nominal rest breaks between sets, the same notes indicate the appellant continues to need assistance when going to the restroom, has limited ROM, and performs most of her exercises lying down. The notes further state the appellant does not initiate self-care and plans to rely heavily on aid support for her ADLs upon returning home, as opposed to relying on independence with such activities. The notes also state there appears to be some level of learned helplessness and or disconnection between what the appellant can and cannot do on her own. This lack of independence is concerning, particularly when the appellant's care team acknowledges staffing is a major challenge in the community setting.

The appellant has been receiving short-term care for more than more than six months and medical notes indicate the appellant has functionally declined over the past year with only recent limited gains. While the appellant is very motivated to leave the rehab facility, she continues to require hands-on assistance with her activities of daily living, including a Hoyer lift to transfer out of her bed, and assistance with her ostomy. When viewed in its entirety, the medical evidence contained in the record demonstrates the appellant’s infirmities have not improved sufficiently to alleviate CHA’s reasonable concerns regarding the appellant's ability to safely live in the community.

I find no error in CHA's decision to deny the appellant's request for continued short-term rehabilitation services and to recommend placement in a long-term care facility, as the appellant requires more care than can be safely provided in the community at this time. As a result, this appeal must be DENIED.

Order for Cambridge Health Alliance

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc:

Cambridge Health Alliance, Attn: Katheryn Tylander, PT, DPT, Manager of Quality and Compliance, 163 Gore Street, Cambridge, MA 02141