Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2504936
Decision Date:	8/11/2025	**Hearing Date:**	05/07/2025
Hearing Officer:	Alexandra Shube	**Record Open to:**	07/08/2025

Appearances for Appellant:
Via telephone:
[redacted]

Appearances for Respondent:
Via telephone:
John Shea, Esq., Fallon, Mirick Law
Michelle Malkoski, Sr. Dir., Nursing and Quality, Summit ElderCare PACE
Shannon Slattery, Mgr., Quality and Staff Development, Summit ElderCare PACE

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; involuntary disenrollment
Decision Date:	8/11/2025	**Hearing Date:**	05/07/2025
Respondent's Reps.:	John Shea; Michelle Malkoski; Shannon Slattery	**Appellant's Reps.:**	[redacted];
Hearing Location:	Quincy Harbor South, Remote	**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 February 3, 2025, Fallon Health's Summit ElderCare (hereinafter Summit, Fallon, or Summit/Fallon), a MassHealth Program for All-Inclusive Care for the Elderly (PACE), notified the appellant that he would be involuntarily disenrolled from the program on April 1, 2025 for noncompliant behavior. Exhibit 1. The appellant filed this appeal in a timely manner with the Board of Hearings on March 26, 2025. 130 CMR 610.015(B) and Exhibit 2. Termination from a program is valid basis for appeal. 130 CMR 610.032(A).

Action Taken by Respondent

Summit/Fallon involuntarily disenrolled the appellant from PACE.

Issue

The appeal issue is whether Summit/Fallon followed regulations when it involuntarily disenrolled the appellant from PACE.

Summary of Evidence

Summit/Fallon offered the following information through testimonial and documentary evidence: On February 3, 2025, Summit notified the appellant that he would be involuntarily disenrolled from the program effective April 1, 2025 because he has engaged in noncompliant behavior as it pertains to his care and as such, is jeopardizing his health or safety, or the safety of others. Exhibit at 4. The notice provided the following explanation for Summit/Fallon's decision:

> You suffer from several chronic heart conditions including congestive heart failure and coronary artery disease with angina. Your noncompliance with your plan of care has caused this disease process to worsen. Your provider has discussed the risk of continuing to consume alcohol and how it impacts your health conditions. You have been offered many interventions such as detox, counseling, virtual AA meetings and have declined all interventions. We have had several team meetings where you and your HCP were present to address your non-compliance with care. Despite agreeing to interventions during these meetings you continue to be noncompliant with any interventions. We have not seen an improvement in your noncompliance. You continue to be noncompliant with your center attendance and appointments. You have missed [redacted] appointments/attendance days in the year 2024. Your noncompliance has also led to [redacted] emergency room visits for the year of 2024, and most recently you have been noncompliant with wearing your surgical shoe, remaining non-weight bearing, and removing wound dressings.

Id.

The PACE regulations for involuntary disenrollment can be found at 42 CFR § 460.164. *Id*. at 21. A member who engages in disruptive or threatening behavior may be involuntarily disenrolled. *Id*. Disruptive or threatening behavior is defined as the following:

> Behavior that jeopardizes the participant's own health or safety, or the safety of others; or
> Consistent refusal to comply with an individual plan of care or the terms of the PACE enrollment agreement by a participant with decision-making capacity. Note that a PACE organization may not involuntarily disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior related to an existing mental or physical condition unless the participant's behavior is jeopardizing his or her health or safety or that of others. Noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

Id.

The appellant's struggles with alcohol use and noncompliance with care have been an on and off issue for years.[1] *Id*. at 10. In recent months, this behavior has escalated and is jeopardizing his health as well as the safety of others. *Id*. His assisted living facility (ALF) is seeking to evict him due to allegations of him putting his hands on a staff member and having a verbal altercation with another resident. *Id*. In the last six months, there have been a series of emergency room visits related to falls and alcohol use, as well as numerous no-shows and cancelled appointments. *Id*. The record includes the following examples of falls and emergency room visits from 2024:

- [redacted]024 Fall at ALF. Intoxicated, fell twice as he was pouring himself a glass of vodka. Bruising bilateral buttocks.
- [redacted]24 Fall at ALF. Ppt states he was drinking the night of the fall. He was not using walker in room. Abrasion to r knee and nose bridge.
- [redacted]2024 Ppt seen at ALF by RN. Ppt intoxicated and unsteady on his feet.
- [redacted]24 Ppt intoxicated at the casino. He stumbled forward falling onto his knees. EMS called, transferred to ED.
- [redacted]24 Ppt was intoxicated, had a fall. Sent to ED for intoxication.
- [redacted]24 Fall at ALF-Ppt intoxicated. Reminded to use walker.
- [redacted]2024 ALF reported ppt found on floor intoxicated and sent to ER due to laceration to L-eyebrow, required sutures.
- [redacted]24 Fall at ALF- ETOH intoxication. ER visit after falling and hitting his head.
- [redacted]2024 Ppt felt onto his knees. EMS lift assist. Suspected to be under the influence ETOH.
- [redacted]2024 Ppt fell c/o chest pain sent to ER. No injuries, offered counseling for ETOH, educated to use walker at all times.
- [redacted]Was transferred to ED for concern of ETOH intoxication.
- [redacted]24 Ppt had a fall at the ALF, sent to ER for intoxication and safety related to agitation.
- [redacted]24 Verbal Altercation with another resident at his ALF. Was intoxicated. Put hands on a staff member.
- [redacted]24 ALF reported ppt was found on the floor and appeared intoxicated.
- [redacted]24 Transferred to ED due to intoxication after a fall resulted in a head injury.
- [redacted]24 Admitted to ER for intoxication and altered mental status.
- [redacted]24 Returning from a Bar intoxicated and fell before the main entrance at ALF. He could not get up. EMS called and transferred to ER. Admitted due to NSTEMI.
- [redacted]24 Seen by Provider for acute visit – last drink in the AM.
- [redacted]24 Fall at the ALF. Ppt intoxicated. Sent to ER for chest pain.
- [redacted]24 Fall with injury while at the ED.

[1] Around 2019, prior to the COVID pandemic, Summit took similar steps to involuntary disenroll the appellant. Summit rescinded the involuntary disenrollment when the appellant agreed to a 30-day inpatient program, which Fallon authorized and paid for. There was a brief period of weeks where the appellant was able to be compliant (similar to now), but then the same noncompliant behaviors arose; however, due to the Public Health Emergency from 2020 through 2023, there could be no disenrollment from the program.

Id. at 10.

Summit/Fallon also offered the following, non-exhaustive series of events as further evidence of the appellant's noncompliant behavior:

- [redacted]25- Nurse went to see ppt for wound care and reported ppt was intoxicated with a large bottle of vodka in bed. Ppt was not wearing his sling, and had removed his dressing himself prior to the nurse's arrival. Ppt was also not using wheelchair and was weight bearing on foot with fractures. Nurse educated ppt on importance of compliance with wheelchair, sling and keeping dressing on.
- [redacted] Family meeting was held with ppt, sister and IDT. Discussed ER visits due to falls and safety issues while intoxicated. Ppt raising his voice in the meeting and avoiding conversation related to ETOH abuse. He declines any interest in inpatient care. The team discussed other treatment options that would not require inpatient care. Team encouraged to consider treatments if he would like to become sober. Resource list was provided to ppt and team encouraged him to take time with his family to consider treatment options.
- [redacted]24- Saw PCP for acute visit. Drank that morning prior to going to appointment. Alcohol dependance addressed with ppt by PCP.
- [redacted]24- Ppt canceled morning ride to Summit and did not participate in virtual AA meeting with SW.
- [redacted]24- SW received report from ALF that ppt was sent to ER after a fall and choking an ALF staff member. ALF reports they plan to issue an immediate eviction to ppt. SW filed APS self-neglect report.
- [redacted]24- ALF reported ppt had an altercation in the dining room after being redirected to return to his room d/t being barefoot in the dining room. Ppt became upset and had an altercation with a female resident and a dining room staff member. After returning to his room he began arguing with his roommate. ALF staff believe he was intoxicated at time of incident.
- [redacted]24- PCP visit for post hospital evaluation. Ppt had been transferred to the ER on [redacted] with concerns of alcohol intoxication. PCP advised him that his ongoing alcohol consumption makes him a risk in the community, despite supports from Fallon. Ppt made aware that if he continues to drink he may jeopardize his enrollment due to safety concerns. Ppt not interested in stopping but did inform pcp that his frequency and amount has decreased. He stated he drinks a pint of vodka 2-3 times a week.
- [redacted] Care team meeting with ppt and sister/HCP. Care team discussed safety concerns with ppt due to reoccurring falls as a result of ETOH use. Ppt reported that his goal is "peace" and does not intend to stop drinking alcohol. Ppt refused to share where he receives money to buy alcohol, as ppt has money manager and sister/hcp controls finances. Care team suggested use of wheelchair when using alcohol due to risk of falls. Ppt did not want to use wheelchair but would think about it.

Id. at 11-12.

Summit/Fallon provided a handwritten list of appointment cancellations and no-shows for attendance at the program. *Id*. at 13-14. From [redacted] 2024 through [redacted] 2025, there were at least twenty-four no-shows at the Summit Elder site. *Id*.

His clinical records show a [redacted] 2025 office note from his semi-annual visit stating that he continues to "indulge in ETOH use" and his emergency room utilization increases when he is drinking more. *Id*. at 36. The assessment from that visit indicates "alcohol dependence with other alcohol-induced disorder, chronic, sub-optimal control." *Id*. at 48. The patient plan states:

> Last ER visit was [redacted] 2024 d/t to a fall secondary to ETOH use. Patient use of alcohol has increased which has jeopardized his safety in the community and also his home at the [redacted] We have had several meetings with participant highlighting his safety and the risk to his already compromised health. He understands, however, given his long history of ETOH use, he is reluctant to seek help as he likes drinking and wants to continue. Nevertheless, he did relay that he was going to AA meeting. Will continue to f/u.

Id.

The clinical record also includes numerous social work and nursing notes showing a pattern of alcohol use, falls, and emergency room visits. *Id*. at 69-156. Additionally, the clinical record shows numerous conversations with the appellant about safety, the risk of his continued alcohol consumption, and available treatment options, both inpatient and outpatient. *Id*. At a [redacted] 2024 office visit, the appellant's provider stated that his "ongoing alcohol consumption makes him a risk in the community." *Id*. at 156. The provider advised that if he continues to drink, he may jeopardize his enrollment with Fallon due to safety concerns. *Id*.

Summit/Fallon explained that PACE is a unique program, based on an extensive, mutual enrollment agreement. Compliance with the agreed upon plan is integral because of the higher level of involvement than typical primary care. The appellant's Summit PACE benefits are active and protected during the appeal process by aid pending.

The appellant's attorney acknowledged the appellant's record, but stated that he is eager to continue participation in PACE. Given the nature of the appellant's illness (alcohol use disorder), there are inherently ups and downs. They are asking that Summit continue to work with him. Since the notice in February, the appellant has not had the same issues. On [redacted] 2025, the appellant completed a three-week intensive, partial-hospitalization therapy program. Exhibit 6 at 6. Subsequently, he has engaged in AA. His attorney argued that Summit's characterization of the appellant as unwilling to comply is misleading. For example, Summit's February notice referenced him declining virtual AA meetings. The appellant would not be able to meaningfully participate in virtual AA meetings. They would not be accessible to him without devices. The appellant has now found an AA program that is accessible and he is participating. The most recent meeting he attended was this past Friday, five days ago. He has a temporary sponsor and is engaging now.

Given the nature of his illness, he is making an effort, but it is a lifelong, day-to-day process.

The appellant's attorney also took issue with Summit characterizing all the issues and events as being related to alcohol use when there are other diagnoses at play. The appellant's neuropathy and high blood pressure also contributed to the falls. Additionally, the appellant is very tall [redacted] so when he falls, it is significantly more noticeable. The appellant is trying to be more autonomous and things have improved as far as the number of emergency room visits. There have been serious improvements in the three months since the involuntary disenrollment notice. Furthermore, disenrollment has serious implications for the appellant. It will make it more difficult for him to stay at his ALF and likely lead to homelessness, which will result in lack of continuity of care. His health care proxy (HCP) is currently not invoked and he is engaged in the representative payee program to help with his finances. He is more willing to engage now and explore other options. He sees how serious the situation is. The appellant's attorney felt that a cognitive assessment would be illuminating. She argued that the health issues that are making it difficult for the appellant to comply with the PACE plan are the exact issues that make the appellant in need of the kind of care that PACE provides.

The appellant's sister, who is involved with the appellant's care and in regular contact with the appellant, testified that since the notice, he has finally agreed to using a wheelchair, something he had previously been refusing. She thinks that the appellant is doing much better. She talks to him on the phone twice a week and he has been sober every time. On April 28, 2025, she contacted the social worker who reported that the appellant's has not missed any meetings at Summit since the February notice. He completed the three-week, intensive daily program, got a seven-day coin from AA, and is scheduling transportation on his own. The director at his ALF also reported to the sister that he has not had any issues since the February notice.

The appellant's representatives also clarified that some of his no-shows at Summit were due to ER visits, conflicting appointments, or transportation difficulties. The appellant's attorney also pointed out that the log of missed appointments provided by Summit is unsigned and does not indicate the type of appointment and reason for missing it.

Summit/Fallon responded that it appreciates the appellant's recent efforts. Summit explained that the log of missed appointments is based on the appellant's medical records. There are only a finite number of transportation spots in a day program and his no-shows use up one of those spaces. The vast majority of the no-shows in the log were clinic appointments and Summit Elder center visits and were related to his lack of compliance, not other issues. Summit also referenced the previous attempt at disenrollment in 2019, where the appellant was compliant and engaged for a number of weeks before returning to his noncompliant behavior. As to the possibility of homelessness, housing is not a PACE benefit. PACE does provide a stipend to ALF residents for personal care needs; however, that same stipend is available through other programs that do not have the same level of requirements and do not necessitate the same level of engagement as the PACE plan of care. Possible homelessness and eviction from his ALF are due to his behavior at the

ALF and not related to his potential disenrollment from PACE.

At the request of the appellant's attorney, the record was held open until June 6, 2025 for her to submit additional supporting evidence. Exhibit 7. Summit/Fallon's attorney was initially given until June 27, 2025 to respond, but was given an extension until July 8, 2025 due to a communication error and some time out of the office. *Id*.

In her record open submission, the appellant's attorney argued that any violation of program rules was exaggerated by the program with the intent of discharging the appellant expeditiously, and that any such conduct was attributable to several factors that should not result in a penalty to him. Exhibit 8 at 2. Those factors include (1) issues clearly resulting from his medical conditions, namely neuropathy, heart disease, alcohol use disorder ("AUD"), depression, and other chronic health conditions; (2) failures by his transportation provider to communicate effectively; and (3) minor disagreements about course of treatment that were addressed prior to hearing. *Id*. Finally, the appellant asserts that he is actively working to address any shortcomings. *Id*.

The appellant's attorney argued that the Centers for Medicare and Medicaid Services (CMS) set narrow criteria for involuntary disenrollment. *Id*. at 3. 42 CFR § 460.164(e)(1) states that "A PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others." *Id*. The appellant should not be discharged for issues largely beyond his control that are predictable as part of his conditions. *Id*. The disorder itself complicates his ability to comply with treatment options. Forcing him, because of a symptom of his disorder, to disengage from the trusted and supportive providers affiliated with Summit PACE will disrupt, not motivate, the appellant to improve his health outcomes. *Id*. at 5. Further, she argues that, pursuant to 42 CFR § 460.112(e), the appellant should not be discriminated against in the delivery of required PACE services based on age or mental or physical disability. *Id*.

The appellant's attorney also argued that the appellant was not at fault for all the alleged missed appointments and missed appointments are not per se self-endangerment. *Id*. She disputed that the handwritten log of missed appointments, particularly without specifying what those appointments were for, supports the allegation that the appellant is a danger to himself or others, as required for disenrollment. *Id*. at 6. Transit issues, which have been a subject of meetings at his residence, contributed to difficulty getting to and from the program. *Id*. He also may have missed appointments in the past due to acute health concerns, including hospitalizations. Further, the appellant's attorney argued that if the appellant missed appointments due to his own behavior, this behavior is a symptom of his brain condition and other health issues. *Id*.

She also argued that the appellant is entitled to make certain decisions about his health care, in concert with his providers without being found in violation of program rules. *Id*. He has the right to participate in all decisions related to his treatment and the right to refuse any and all care and

services. *Id*. Describing his disinterest in or reservations about a particular course of care as noncompliant behavior is disingenuous. *Id*. She argued that he did not refuse a wheelchair, rather, he took his time in deciding to embrace the major mobility change. *Id*. at 6-7. His behavior may be a challenge to address, but it is surmountable and accommodatable. *Id*. at 7.

Finally, the appellant's attorney argues that the appellant's condition and compliance have demonstrably improved since 2025. *Id*. Since the February notice, he engaged in and completed the intensive outpatient program. *Id*. At hearing, he expressed his willingness to try new medication to treat AUD. *Id*. In the weeks since the hearing, he reached out to an organization that administers an inpatient program for AUD treatment. *Id*. As of June 2, 2025, he is waiting to hear from them about a bed opening up so he can enroll. *Id*. On June 4, 2025, he attended a meeting with a behavioral health clinician at Summit to discuss this and other intense treatment options. *Id*. He has kept notes about AA meetings he has attended during the appeal process. *Id*. According to his notes, in an approximately two-month period, he attended 26 meetings. *Id*. The appellant recognizes the value of the Summit PACE program in allowing him to remain in the community for as long as possible and assisting him with access to care. *Id*. at 7. Additionally, in a statement from the appellant's sister, included as an exhibit to the appellant's attorney's memorandum, his sister states that he has tried AA in the recent past [redacted] but he was prevented from going because the building was not handicapped accessible. *Id*. at 21. She questioned how this could be counted against him as noncompliance. *Id*.

In closing, the appellant's attorney argued that Fallon is making a judgment call that a particular health condition is in itself noncompliance. *Id*. at 8. He is engaging in treatment now and exploring new options. *Id*. As a member of his own care planning team, he should be listened to and not dismissed as failure to engage in a prescribed course of treatment. *Id*. His conduct does not rise to the level of a dangerous violation permitting involuntary disenrollment. *Id*. Disenrollment would be a major contributor to worsening health. *Id*. He should not be disenrolled as a penalty for having a difficult-to-manage health condition. *Id*.

In its response, Summit/Fallon's attorney emphasized that the appellant, who has decision-making capacity and has not been the subject of either guardianship or conservatorship, continues to be consistently noncompliant. Exhibit 9 at 1. The record is replete with references to the appellant's noncompliance with respect to continued consumption of alcohol and how it impacted his health. *Id*. Since the hearing, the appellant has had one emergency room visit related to a fall while intoxicated with an elevated blood alcohol level on [redacted] 2025. *Id*. at 2. He was noted to have fallen twice on [redacted] 2025 due to intoxication. *Id*. Summit/Fallon provided records documenting this incident. *Id*. at 3-4. At 11:51AM, a nurse from the ALF reported that the appellant was inebriated, lost his balance, and fell. *Id*. at 3. At 1:40PM, another note indicates the appellant was inebriated and fell a second time when leaving the dining room and hit his head. *Id*. He was sent to the hospital via ambulance. *Id*. The appellant was using his walker during both falls that day, but he was inebriated. *Id*. Also included was a post hospital evaluation performed on [redacted] 2025 after his hospitalization as a result of falling while intoxicated. *Id*. at 4.

Summit/Fallon maintained its position that the appellant has decision-making capacity and continues to be consistently noncompliant. *Id*. at 2. Summit/Fallon believes that the record reflects compliance with respect to the disenrollment process as described at 42 CFR § 460.164 and that the appellant's noncompliance and behavior puts the appellant's health and safety in jeopardy. *Id*.

Findings of Fact

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

1. On February 3, 2025, Summit/Fallon notified the appellant that he would be involuntarily disenrolled from the program for engaging in noncompliant behavior.

2. On March 26, 2025, the appellant filed a timely request for a fair hearing with BOH.

3. The appellant has had numerous falls and emergency room visits due to alcohol use and intoxication.

4. The appellant has missed appointments and attendance days in 2024 and early 2025 leading up to the February notice.

5. The appellant's care team has discussed his noncompliance with him on numerous occasions and offered many interventions which the appellant has declined and/or been noncompliant with.

6. The appellant has been noncompliant with wearing his surgical shoe, remaining non-weight bearing, and removing wound dressings.

7. Since the notice, the appellant participated in a three-week intensive day program and has attended AA meetings; however, on [redacted] 2025, the appellant was intoxicated and had two falls, the second of which resulted in a hospitalization.

8. The appellant's Summit PACE benefits are active and protected by aid pending during the appeal process.

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 rather than nursing homes. PACE programs are subject to federal and state regulations

The federal regulations regarding involuntary disenrollment of a PACE participant are set forth in 42 CFR § 460.164:

Involuntary disenrollment.

(a) Effective date. A participant's involuntary disenrollment occurs after the PACE organization meets the requirements set forth in this section and is effective on the first day of the next month that begins 30 days after the day the PACE organization sends notice of the disenrollment to the participant.

(b) Reasons for involuntary disenrollment. A participant may be involuntarily disenrolled for any of the following reasons:

(1) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any premium due the PACE organization.
(2) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any applicable Medicaid spend down liability or any amount due under the post-eligibility treatment of income process, as permitted under §§ 460.182 and 460.184.
(3) The participant or the participant's caregiver engages in disruptive or threatening behavior, as described in paragraph (c) of this section.
(4) The participant engages in disruptive or threatening behavior, as described in paragraph (c) of this section.
(5) The participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances.
(6) The participant is determined to no longer meet the State Medicaid nursing facility level of care requirements and is not deemed eligible.
(7) The PACE program agreement with CMS and the State administering agency is not renewed or is terminated.
(8) The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

(c) Disruptive or threatening behavior.

(1) For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:

(i) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or
(ii) A participant with decision-making capacity who consistently

refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.

(2) For purposes of this section, a participant's caregiver who engages in disruptive or threatening behavior exhibits behavior that jeopardizes the participant's health or safety, or the safety of the caregiver or others.

(d) Documentation of disruptive or threatening behavior. If a PACE organization proposes to disenroll a participant based on the disruptive or threatening behavior of the participant or the participant's caregiver, the organization must document the following information in the participant's medical record:

(1) The reasons for proposing to disenroll the participant.

(2) All efforts to remedy the situation.

(e) Noncompliant behavior.

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

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

(f) State administering agency review and final determination. Before an involuntary disenrollment is effective, the State administering agency must review it and determine in a timely manner that the PACE organization has adequately documented acceptable grounds for disenrollment.

Emphasis added.

Here, Summit/Fallon seeks to involuntarily disenroll the appellant as a participant of Summit's PACE for noncompliant behavior pursuant to 42 CFR § 460.164(b)(4). Specifically, Summit/Fallon alleged that the appellant has engaged in noncompliant behavior as it pertains to his care and as such, is jeopardizing his health or safety, or the safety of others. Summit/Fallon provided ample documentation of the appellant's history of noncompliance with medical advice and failure to keep appointments.

The appellant's attorney argued that regulation prevents Summit/Fallon from disenrolling the appellant for noncompliant behavior when that behavior is related to a mental or physical condition of the member; however, there is an exception when the participant's behavior jeopardizes his or her health or safety, or the safety of others. Here, his repeated alcohol use against medical advice continues to jeopardize his health and safety. While the appellant argues that his behavior has improved since the February notice, there was already documentation

following the hearing that the appellant had two falls due to alcohol use which resulted in another hospitalization.

The appellant also disagreed with the handwritten log provided by Summit/Fallon regarding the missed appointments. This argument was not persuasive. The burden of proof falls to the appellant and his attorney has provided scant evidence to contradict the log. While the handwritten log of missed appointment could have been better presented, it is supported by the appellant's clinical record.

Summit/Fallon has sufficiently justified its decision to involuntarily disenroll the appellant from PACE for engaging in noncompliant behavior that jeopardizes his health or safety and has appropriately followed the regulations in doing so.

For these reasons, the appeal is denied.

Order for Respondent

Rescind any aid pending protection and proceed with the disenrollment from the PACE program.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

[redacted]