

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Dismissed in part;  
Approved in part;  
Denied in part

**Appeal Number:** 2155383

**Decision Date:** 10/13/2021

**Hearing Date:** 09/09/2021

**Hearing Officer:** Sara E. McGrath

**Appearances for Appellant:**




**Appearances for SCO/CCA:**

Cassandra Horne, Appeals and Grievances  
Supervisor;  
Jasmin Clemons, RN, Supervisor of SCO PCA  
Assessments



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

## APPEAL DECISION

<b>Appeal Decision:</b>	Dismissed in part; Approved in part; Denied in part	<b>Issue:</b>	Prior Authorization for PCA Services
<b>Decision Date:</b>	10/13/2021	<b>Hearing Date:</b>	09/09/2021
<b>SCO's Reps.:</b>	Cassandra Horne; Jasmin Clemons	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### Authority

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

### Jurisdiction

Through a notice dated May 22, 2021, Commonwealth Care Alliance (CCA), a senior care organization (SCO) which contracts with MassHealth, notified the appellant that it had denied her Level 1 Appeal regarding her request for payment of personal care attendant (PCA) services from May 1, 2021, through April 30, 2022 (Exhibit 3, p. 9).<sup>1</sup> The appellant filed a timely appeal with the Board of Hearings (130 CMR 610.015(B)). The modification of a request for services is a valid basis for appeal (130 CMR 610.032). At the conclusion of the hearing, the record was held until October 7, 2021 for the parties to submit additional information (Exhibit 4).

### Action Taken by SCO

CCA modified the appellant's request for payment of PCA services, and then denied her Level 1 Appeal of that initial denial.

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<sup>1</sup> The appellant had also appealed a March 16, 2021 notice denying her request for home delivered meals (Exhibit 1, p. 15). CCA representatives explained that due to an error in its notice, CCA had agreed to rescind the notice and had reinstated these services. CCA explained that it would reissue the notice, with appeal rights. This issue was therefore not discussed at hearing and is not addressed in this decision.

## Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of any additional PCA services.

## Summary of Evidence

Representatives from CCA appeared via telephone and offered the following factual background through testimony and documentary evidence: The appellant is a MassHealth member in her 90s who is enrolled in CCA, a SCO that contracts with MassHealth. The appellant has the following diagnoses: dementia, hypertension, osteoporosis, pulmonary fibrosis, vitamin D deficiency, pseudogout, bowel incontinence, urge urinary incontinence, spinal stenosis, gout, generalized osteoarthritis, gait disturbance, dry eye, lumbago, macrocytic anemia, and gas. The appellant has been receiving PCA services through CCA for approximately two years, and most recently had been receiving 42 hours of day/evening PCA services per week (and 14 night PCA hours per week) (Exhibit 3, p. 9). On April 7, 2021, CCA reassessed the appellant to determine her current functional abilities and her ongoing need for PCA services (Exhibit 3, pp. 20-29). On April 20, 2021, CCA notified the appellant that effective May 1, 2021, her PCA services would be reduced to 34.25 day/evening hours per week (and 14 night PCA hours per week) (Exhibit 3, pp. 12-19).<sup>2</sup> The appellant filed a timely Level 1 internal appeal (Exhibit 3, p. 30). On May 22, 2021, CCA notified the appellant that her Level 1 internal appeal had been denied (Exhibit 3, pp. 49-56). The appellant then filed a timely appeal with the Board of Hearings.

CCA referenced an April 7, 2021 PCA telehealth assessment in Exhibit 3, pp. 20-29, which provides the following details regarding its reevaluation of the appellant's need for PCA services:

PCA Activity	Status	PCA Time (in minutes)	Times a Day	Days a Week	Total Minutes per Week	Comments
Mobility - Transfers	A-Mod	5	4	7	140	The member is reported to require assistance to manage transfers in/out of wheelchair. The member surrogate reports member resides in her wheelchair most of the day until it's time for her to go up the stairs to bed. The member is reported to require assistance to

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<sup>2</sup> CCA explained that the appellant's current PCA services have been continued during the appeal process (Exhibit 3, p. 1).

						manage bed transfers due to impaired Mobility, OA, Knee and Back Pain. Surrogate reports the member bedroom is located on second floor with 18 steps to ascend/descend and the member will require assistance from PCA to manage this task. The RN unable to assess the member ability as member was residing in her wheelchair downstairs and unable to demonstrate this task.
Assistance with Medications	D	3	5	7	105	Dependent – The member surrogate Chris/DIL reports the member medications are filled in bottles and that PCA will pick up the medication from the pharmacy. Surrogate reports PCA will set up the pills in a pill box, however due to the member Dementia she requires hands on assistance for PCA to administer medications 5 x per day.
Shower	A-Max	45	1	7	315	Maximum Assistance – The member surrogate reports the member bathes every day and will require assistance with transfers in/out tub due to OA and Dementia, Shoulder

						Pain. Surrogate reports the member depends on PCA to wash her UB/LB, back, BLE, private area and feet due to Dementia and inability to initiate task. The member surrogate reports PCA washes her hair during shower and performs all grooming tasks on member behalf, oral hygiene /denture care, lotions, styling /combing hair, fingernails and toenail care. Surrogate reports member can wash her face with rag if handed to her.
General Grooming	D	20	1	7	140	SEE COMMENTS ABOVE
Dressing	A-Max	23	1	7	161	Maximum Assistance – The member surrogate reports the member requires assistance from PCA with UB/LB dressing /undressing due to Dementia, OA, Shoulder Pain, and inability to initiate task. Surrogate reports the member requires assistance to don tops, blouses, buttons, zipper, undergarments, socks and shoes with laces.
Undressing	A-Max	15	1	7	105	Maximum Assistance – The member surrogate reports the member requires assistance from PCA with UB/LB dressing

						/undressing due to Dementia, OA, Shoulder Pain, and inability to initiate task. Surrogate reports the member requires assistance to don tops, blouses, buttons, zipper, undergarments, socks and shoes with laces.
Eating	I	0	0	0	0	Independent – Surrogate reports the member is able to manage self-feeding task and use of cups and utensils. The member surrogate reports member food is cut up as she eats soft foods due to dentures.
Bladder Care	A-Max	10	4	7	280	Maximum Assistance – The member surrogate reports the member is incontinent of urine during the day and wears Adult Pull-ups for protection. Surrogate reports the member requires assistance with DME changes 3-4x per day, personal hygiene care and clothing management due to member Dementia, OA and Shoulder Pain.
Bowel Care	A-Max	13	1	7	91	Maximum Assistance – The member surrogate reports the member has episodes of stool incontinence 1 x per day when she is unable to make it

						to the bathroom on time. The member surrogate reports the member will also communicate the need to have a bowel movement on the toilet. The member requires assistance to manage personal care hygiene, clothing management and DME changes due to Dementia, OA and Shoulder Pain
Laundry	D	45	1	2	90	Dependent – Surrogate reports washer/dryer is located in the basement and due to member dementia, she is unable to participate in Laundry task. The surrogate reports the member laundry is washed separately due to B&B incontinence. Surrogate reports the member PCA manages all laundry folding, sorting, hanging and putting away clothing on member behalf.
Shopping	D	30	1	1	30	Dependent – The member does not participate in any shopping task per surrogate Chris/DIL due to her Dementia. Surrogate reports the member resides with her Family that manages all shopping tasks on behalf of the member and

						household. <b>(Time to be adjusted for PCA to pick up member medication from the Pharmacy).</b>
Housekeeping	D	15	1	2	30	Dependent – Surrogate reports member does not participate in any housekeeping task due to Dementia and inability to push, pull or lift heavy cleaning tools. Surrogate reports the member resides in the home with her family that manages all the housekeeping tasks. . . .
Meal Prep and Clean-Up Breakfast	D	20	1	7	140	Dependent – Surrogate reports the member does not participate in any cooking /preparation of meals due to member Dementia and inability to operate stove. The member no longer receives HDM 5 x per week per surrogate. Surrogate reports the member will eat three meals per day.
Meal Prep and Clean-Up Lunch	D	25	1	7	175	Dependent – Surrogate reports the member does not participate in any cooking /preparation of meals due to member Dementia and inability to operate stove. The member no longer receives HDM 5 x per week per surrogate.



						Surrogate reports the member will eat three meals per day.
Meal Prep and Clean-Up Dinner	D	35	1	7	245	Dependent – Surrogate reports the member does not participate in any cooking/ preparation of meals due to member Dementia and inability to operate stove. The member no longer receives HDM 5 x per week per surrogate. Surrogate reports the member will eat three meals per day such as soft foods, instant noodles, Pho, Fish, Rice or Potatoes. Surrogate reports member meals are usually different from what family prepares due to texture/soft diet.

CCA representatives testified that documentation makes clear that the appellant needs PCA assistance with mobility and transfers; the appellant needs help with bed transfers, transfers in and out of her wheelchair, and help with stairs. The appellant needs help with medication; the PCA picks up medication at the pharmacy, pre-fills the medication box, and administers the medication. The appellant needs help with tub transfers, bathing, and grooming. The appellant needs help with dressing/undressing, as well as help with toileting and personal hygiene, day and night. The appellant has informal supports for transportation and telephone use. The appellant needs full assistance for all other homemaking tasks (Exhibit 3, p. 1).

The appellant was represented at hearing by a senior paralegal and her surrogate/daughter-in-law, both of whom testified by telephone and offered the following additional general details: The appellant is frail and suffers from progressive dementia and many other medical diagnoses that affect her mobility, including osteoarthritis, shoulder pain, back pain, and knee pain.

The appellant submitted a post-hearing memorandum that specifically addresses the PCA tasks (those arguments are set forth below), and also sets forth more general arguments regarding the PCA assessment. The appellant argues that CCA failed to obtain or consider the previous PCA assessment completed in 2019 by a different insurer, and that it therefore missed critical information regarding the appellant's deterioration. Further, the appellant argues that because CCA

conducted the current evaluation remotely and did not send a copy of the evaluation to the appellant's surrogate before it was finalized, its contents are not reliable (Exhibit 5).

The parties went through the above assessment, in detail, and the following areas were successfully negotiated:

**Mobility – Transfers:** CCA agreed to an increase from 140 minutes per week (5 x 4 x 7) to 329 minutes per week (8 x 4 x 7 for assistance with stairs, and 3 x 5 x 7 for other transfers).

**Assistance with Medications:** The appellant initially argued that 105 minutes per week (3 x 5 x 7) was insufficient, but ultimately agreed with this amount of time.

**Bladder Care:** CCA agreed to an increase from 280 minutes per week (10 x 4 x 7) to 868 minutes per week (19 x 4 x 7 for assistance with episodes involving incontinence, and 8 x 6 x 7 for assistance with other episodes involving regular toileting needs).

The parties were unable to resolve the following areas:

**Dressing/Undressing:**

CCA authorized 161 minutes per week for PCA assistance with dressing (23 x 1 x 7), and 105 minutes per week for PCA assistance with undressing (15 x 1 x 7). CCA explained that the appellant needs maximum assistance with these two tasks. CCA referenced a document entitled Time-For-Tasks Guidelines for the MassHealth PCA Program, which provides average time estimates for tasks based on the level of assistance needed (Exhibit 3, pp. 31-40). These guidelines suggest that for an individual requiring maximum assistance, 23 minutes for dressing and 15 minutes for undressing should be sufficient time (Exhibit 3, p. 36). The appellant's surrogate explained that even with a Pull-Up on, the appellant still has incontinence accidents/leakage of urine and/or stool 3 to 4 times per week, each time necessitating a full change of clothes (including upper body clothing). The surrogate explained that the appellant does not wear lounge wear but rather dresses daily in pants and a blouse. The appellant is requesting that CCA increase the frequency of assistance to at least 2 times per day. CCA responded that in order to increase the frequency of PCA assistance, the time per event would need to be decreased. The appellant declined this offer.

**Eating:**

CCA did not authorize any time for PCA assistance with this task, based on the surrogate's report that the appellant is able to self-feed. The surrogate stated that she did not report that the appellant can feed herself and testified that because of the appellant's diagnoses of gout and pseudogout, she has trouble gripping. She can drink if someone lifts a cup to her mouth, and she needs assistance with utensils. The appellant also has shoulder pain, which impedes her ability to grasp and lift utensils. The appellant also needs supervision with this task. Because she loses focus, she needs cueing and prompting to keep eating.<sup>3</sup> Dinner can take as long as two hours. The appellant is requesting PCA assistance of 30 minutes per meal (30 x 3 x 7) to provide assistance with physically eating, as well as to provide supervision and cueing. CCA responded and stated that it would authorize 15 minutes per meal (moderate assistance), if it was determined that the appellant needs physical assistance for each meal, every day.<sup>4</sup> The surrogate responded that the appellant needs assistance with eating during each meal, every day. CCA also noted that it does not provide coverage for supervision and cueing for SCO members.<sup>5</sup>

**Bowel Care:**

CCA authorized 91 minutes per week for PCA assistance with this task (13 x 1 x 7 = 91). At hearing, the appellant requested an additional 105 minutes per week (15 x 1 x 7) to provide time for assistance when the appellant has an additional bowel movement. The appellant's surrogate described that the appellant consistently has one bowel movement per day, but often has episodes of loose stool and/or diarrhea. The surrogate testified that these episodes of loose stool and/or diarrhea occur often, and when they do happen, they can happen multiple times per day. The surrogate noted that these episodes result increased laundry (cleaning sheets), and sometimes happen in the middle of the night. In response, CCA offered to increase the PCA time from 13 to 19 minutes per task; the appellant's representatives declined this offer.

The appellant added the following additional detail in her post-hearing memorandum:

Considering [the appellant's] frequent bouts of diarrhea, bowel leakage also occurs and also requires 10 minutes each time to change Adult Pull ups and 20 minutes changing sheets, cleaning up surroundings and attending to [the

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<sup>3</sup> The appellant cites M.G.L. 118E, §9D(d) in support of her position that PCA time can be authorized for supervision and cueing.

<sup>4</sup> CCA noted that the guidelines suggest that members who are totally dependent for this task need 30 minutes of PCA assistance for each meal (Exhibit 3, p. 37). Here, the appellant can participate and needs assistance when she has pain and discomfort related to her various diagnoses.

<sup>5</sup> CCA added that time for PCA assistance with supervision and cueing is authorized only for its One Care (Medicare-Medicaid Plan) members, and that time for this type of assistance is generally limited to 10 minutes.

appellant's] personal hygiene and change of clothes.<sup>[6]</sup> This occurs approximately 3 times/week (Exhibit 5, p. 7).<sup>[7]</sup>

## **Findings of Fact**

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

1. The appellant is a female in her 90s who is enrolled in a CCA SCO through MassHealth.
2. The appellant has the following diagnoses: dementia, hypertension, osteoporosis, pulmonary fibrosis, vitamin D deficiency, pseudogout, bowel incontinence, urge urinary incontinence, spinal stenosis, gout, generalized osteoarthritis, gait disturbance, dry eye, lumbago, macrocytic anemia, and gas.
3. The appellant lives with family.
4. The appellant has been receiving PCA services for approximately two years, and most recently had been receiving 42 hours of day/evening PCA services per week (and 14 night PCA hours per week).
5. On April 7, 2021, CCA reassessed the appellant to determine her current functional abilities and her ongoing need for PCA services.
6. On April 20, 2021, CCA notified the appellant that effective May 1, 2021, her PCA services would be reduced to 34.25 day/evening hours per week (and 14 night PCA hours per week).
7. The appellant filed a timely Level 1 internal appeal.
8. On May 22, 2021, CCA notified the appellant that her Level 1 internal appeal had been denied.
9. The appellant then filed a timely appeal with the Board of Hearings.
10. The appellant needs assistance with all activities of daily living (ADLs) and all instrumental activities of daily living (IADLs).
11. CCA authorized 161 minutes per week for PCA assistance with dressing (23 x 1 x 7), and 105 minutes per week for PCA assistance with undressing (15 x 1 x 7).

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<sup>6</sup> A chart in the memo indicates that it requires 13 minutes to change the Adult Pull Ups (Exhibit 5).

<sup>7</sup> The appellant's request for additional time in the memo (30 or 33 minutes, 3 times per week) is not consistent with the time requested at hearing (15 minutes, daily) (Exhibit 5, p. 7 and exhibit A).

12. The appellant is requesting that CCA increase the frequency of assistance with dressing and undressing to at least 2 times per day.
13. The appellant has incontinence accidents/leakage of urine and/or stool 3 to 4 times per week, each time necessitating a full change of clothes (including upper body clothing).
14. CCA did not authorize any time for PCA assistance with eating.
15. The appellant is requesting PCA assistance of 630 minutes per week for PCA assistance with eating (30 x 3 x 7).
16. The appellant has issues with her grip related to her diagnoses of gout and arthritis, and needs consistent physical assistance with eating.
17. The appellant also needs assistance with supervision and cueing while eating.
18. CCA authorized 91 minutes per week for PCA assistance with bowel care (13 x 1 x 7).
19. The appellant is requesting additional time for PCA assistance with bowel care.
20. The appellant consistently has one bowel movement per day and at least 3 times per week has episodes of loose stool and/or diarrhea.

### **Analysis and Conclusions of Law**

Under 130 CMR 508.006, MassHealth members who are enrolled in senior care organizations are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal:

(A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001(A);

(B) a determination by the MassHealth behavioral-health contractor, by one of the MassHealth managed care organization (MCO) contractors, or by a senior care organization (SCO), as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's denial of a request for an out-of-area MassHealth managed care provider under 130 CMR 508.002(F); or

(D) the MassHealth agency's disenrollment of a member from a MassHealth managed care provider under 130 CMR 508.002(G).

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

(1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;

(2) a decision to deny or provide limited authorization of a requested service, including the type or level of service;

(3) a decision to reduce, suspend, or terminate a previous authorization for a service;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following: (a) failure to follow prior-authorization procedures; (b) failure to follow referral rules; and (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.010;

(6) a decision by an MCO to deny a request by a member who resides in a rural service area served by only one MCO to exercise his or her right to obtain services outside the MCO's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

(a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the MCO's network;

(b) the provider from whom the member seeks service is the main source of service to the member, except that member will have no right to obtain services from a provider outside the MCO's network if the MCO gave the provider the opportunity to participate in the MCO's network under the

same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;

(c) the only provider available to the member in the MCO's network does not, because of moral or religious objections, provide the service the member seeks; and

(d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the MCO's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care; (2) the member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance; (3) the member, as determined by the personal care agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

(1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;

(2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;

(3) bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;

(4) dressing or undressing: physically assisting a member to dress or undress;

(5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;

(6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and

(7) toileting: physically assisting a member with bowel and bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

(1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;

(2) meal preparation and clean-up: physically assisting a member to prepare meals;

(3) transportation: accompanying the member to medical providers; and

(4) special needs: assisting the member with:

(a) the care and maintenance of wheelchairs and adaptive devices;

(b) completing the paperwork required for receiving personal care services; and

(c) other special needs approved by MassHealth as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following:

(1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.



(3) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

In this case, the appellant’s SCO, CCA, authorized 34.25 day/evening PCA hours per week for the period of May 1, 2021, through April 30, 2022, a reduction from the 42 day/evening PCA hours that has been previously authorized. The basis of the denial is that the appellant has only demonstrated the medical necessity of PCA assistance of 34.25 day/evening hours per week. The appellant disagrees and argues that additional PCA assistance has been medically justified.

**Dressing/Undressing:**

The appellant has demonstrated additional time is warranted for PCA assistance with these tasks, but not to the extent requested (2 times per day). CCA explained that its PCA program does not cover anticipatory needs, and that because the appellant does not have accidents requiring clothing changes daily, additional time is not justified. The appellant’s surrogate testified credibly, however, that the appellant’s incontinence issues result in the consistent need for additional clothing changes 3 to 4 times per week. These episodes, therefore, are not anticipatory. Thus, the appellant has demonstrated that additional time is necessary, as follows: dressing: 230 minutes per week (23 x 1 x 7 for morning dressing, and 23 x 1 x 3 for additional dressing assistance due to incontinence episodes), and undressing: 150 minutes per week (15 x 1 x 7 for evening undressing, and 15 x 1 x 3 for additional undressing assistance due to incontinence episodes). This portion of the appeal is approved in part.

**Eating:**

The appellant has demonstrated that additional time is warranted for PCA assistance with this task. CCA initially authorized no time for assistance with this task, based on the surrogate’s statement that the appellant is independent with this task. The appellant’s surrogate testified credibly that she did not report that the appellant can self-feed, but rather that she needs help at each meal with both gripping utensils and cups, and with cueing and supervision. CCA responded that because the appellant is able to participate in this task, her level of need falls within the category of moderate

assistance. On that basis, CCA determined that 15 minutes of PCA assistance should be sufficient. Nevertheless, CCA declined to authorize any assistance with this task based on a determination that the appellant does not need help at every meal, or every day. The appellant's surrogate, however, provided detailed and credible testimony that based on the appellant's diagnoses of osteoarthritis and gout, she requires some physical assistance to eat every meal. Therefore, the appellant has demonstrated that she requires 15 minutes of PCA (physical) assistance at every meal.

Further, the appellant has demonstrated that the PCA time should include time for supervision and/or cueing. The appellant cites M.G.L. 118E, §9D(d) in support of her position that PCA time can be authorized for supervision and cueing. That section provides as follows:

The benefits provided to persons considered eligible to enroll in the SCO shall include those services covered by Medicare Part A and Part B; the amount, duration and scope of Medicaid-covered services shall be at a minimum no more restrictive than the scope of services provided under MassHealth standard coverage, and **shall include services covered under the home and community-based services waiver program**; and services necessary for the treatment of mental health or substance abuse (emphasis added).

The regulations concerning services covered under the home and community-based services waiver program include the following provisions regarding PCA services:

Personal care services are covered when the participant requires a range of assistance with ADLs related to independent living and when the personal care service enables the participant to function with greater independence within the participant's home and community. **Personal care services under an HCBS waiver may include supervision and cuing of participants.** Personal care services may also include assistance with IADLs. Personal care services provided under a HCBS waiver may not duplicate personal care services provided under the state plan (emphasis added).

(130 CMR 630.421(A)).

Because the appellant is enrolled in a SCO, PCA time for assistance with supervision and/or cueing may be authorized. The appellant's surrogate provided credible testimony that the appellant requires supervision and cueing with every meal. Thus, in addition to the 15 minutes that the appellant needs for physical assistance with meals, her surrogate provided credible testimonial evidence that an additional 15 minutes is needed for assistance with supervision and cueing.

The appellant has demonstrated that additional time for PCA assistance with eating is justified, as follows: 630 minutes per week (15 x 3 x 7 for physical assistance, and 15 x 3 x 7 for supervision and cueing). This portion of the appeal is approved.

**Bowel Care:**

The appellant has demonstrated additional time is warranted for PCA assistance with this task, but not to the extent requested. As noted above, CCA's PCA program does not cover anticipatory needs, and because the appellant does not have additional bowel movements every day, CCA determined that additional time is not justified. The appellant's surrogate testified credibly, however, that the appellant has additional bowel movements of diarrhea and/or loose stool at least 3 times per week. These episodes, therefore, are not anticipatory. The appellant's argument in support of additional time included time for tasks such as changing sheets, cleaning up the surroundings, and changing the appellant's clothes (Exhibit 5). Because time for assistance with these tasks was authorized elsewhere (laundry, housekeeping, dressing/undressing), authorization of time for assistance with those tasks here would be duplicative. The appellant has demonstrated that additional time is necessary, as follows: 130 minutes per week (13 x 1 x 7 for daily bowel care assistance, and 13 x 1 x 3 for additional bowel care assistance related to episodes of diarrhea and/or loose stool). This portion of the appeal is approved in part.

The appeal is dismissed in part, approved in part, and denied in part.

### **Order for CCA**

Implement agreements made at hearing (increased time for PCA assistance with mobility/transfers and bladder care). Authorize additional PCA time in accordance with this decision (increased time for PCA assistance with dressing, undressing, eating, and bowel care). Terminate aid pending.

### **Implementation of this Decision**

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

## **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.

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Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Cassandra Horne  
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[REDACTED]

[REDACTED]