

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied  
Dismissed

**Appeal Number:** 2177539

**Decision Date:** 12/09/2021

**Hearing Date:** 11/17/2021

**Hearing Officer:** Patricia Mullen

**Appearance for Appellant:**



**Appearances for Senior Care  
Organization (SCO):**

Joanne Sullivan, GNP, United Health  
Care, Health Services Director; Dr. Cheryl  
Ellis, United Health Care, Medical Director,  
Senior Care Options



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Personal Care Attendant (PCA)
<b>Decision Date:</b>	12/09/2021	<b>Hearing Date:</b>	11/17/2021
<b>SCO's Reps.:</b>	Joanne Sullivan, GNP, United Health Care, Health Services Director; Dr. Cheryl Ellis, United Health Care, Medical Director, Senior Care Options	<b>Appellant's Rep.:</b>	Daughter/PCA
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 September 16, 2021, United Health Care (UHC), a MassHealth Senior Care Organization (SCO), denied the appellant's Level 1 appeal of a modification of a prior authorization request for 23.5 hours per week in day/evening personal care attendant (PCA) services, because UHC determined that time requested for assistance with certain activities did not meet MassHealth nor UHC requirements for prior authorization. (130 CMR 422.403; 422.410; 450.204; Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on September 23, 2021. (130 CMR 610.015(B)(7); 610.032(B) and Exhibit 2). A SCO's denial of an internal appeal of a modification of a request for prior authorization is valid grounds for appeal to BOH. (130 CMR 610.032(B)).

## Action Taken by SCO

UHC denied the appellant's internal appeal of a modification of a request for prior authorization for PCA services.

## Issue

The appeal issue is whether UHC was correct, pursuant to 130 CMR 422.403; 422.410; 450.204, in modifying the appellant's request for prior authorization for PCA services.

## Summary of Evidence

The appellant was represented telephonically by her daughter/PCA, whom she authorized to represent her at the hearing. (Exhibits 2, 3). UHC was represented telephonically by its Health Services Director and its Medical Director for Senior Care Options (hereinafter "the UHC representative"). The UHC representative stated that the appellant requested 23.5 hours per week in day/evening PCA services. The appellant had an in-home assessment by a registered nurse on August 6, 2021 and UHC modified the request for PCA services to 12.25 hours per week. (Testimony). UHC issued an initial modification notice dated August 20, 2021 and the appellant filed an internal appeal to UHC. (Exhibit 10, testimony). The UHC representative was the physician reviewer for the internal appeal and after reviewing the medical record, she upheld the determination of 12.25 hours a week of PCA services for the appellant. (Testimony) UHC denied the internal appeal by notice dated September 16, 2021 and such notice was timely appealed to BOH and is at issue in this hearing. (Exhibits 1, 2). In a letter dated November 12, 2021, the UHC representative noted that during the in-home assessment, the appellant was observed to have the functional ability to do some tasks for herself. (Exhibit 8). UHC determined that the time requested for PCA assistance with certain activities of daily living (ADLs) and instrumental activities of daily living (IADLs) was longer than ordinarily required for someone with the appellant's physical needs. (Exhibit 8). The UHC representative noted that UHC determined that 23.5 hours per week in PCA services did not meet MassHealth medical necessity criteria pursuant to 130 CMR 450.204. (Exhibit 8). The UHC representative testified that the appellant's spouse is also receiving PCA services and thus this is considered a companion case and PCA time approved for certain activities is on a shared basis. Based on the current functional assessment and certain activities shared with the spouse, UHC determined 12.25 hours per week in PCA services was medically necessary for the appellant. (Exhibit 8, testimony).

The UHC representative testified that the appellant is [REDACTED] years old and has diagnoses of congestive heart failure, osteoarthritis, obesity, Alzheimer's disease, and breast cancer. The appellant lives with her spouse, who also receives PCA services, and their adult daughter, who is their PCA. (Testimony). On August 6, 2021, a long term care assessment was completed by a UHC registered nurse evaluator. (Testimony, exhibit 11). The UHC representative testified that the nurse evaluator observed the appellant performing certain ADLs and modified the time requested for PCA assistance with 6 ADLs and 6 IADLs. The nurse evaluator reported that the appellant is independent with bed mobility and demonstrated the ability to turn and reposition herself in bed without physical assistance; and is independent with eating and did not exhibit any difficulties with

fine motor coordination. (Exhibit 11, pp. 1, 3).

**Transfers:** The nurse evaluator wrote that the appellant demonstrated transferring on and off a variety of surfaces in her apartment; she required the PCA to hold her under the arms and pull her up to a standing position as well as ease her down to sitting due to bilateral knee and back pain, shortness of breath due to heart failure, and morbid obesity. (Exhibit 11, pp. 1, 2). The UHC representative testified that the appellant requires limited assistance with transfers, that is, the PCA provides 50% of assistance with this task. The UHC representative stated that the nurse evaluator observed the appellant transfer from one room to another, and from bed, to stand, to chair, with assistance. The UHC representative stated that the appellant was approved for 10 minutes a day, or 70 minutes a week for PCA assistance with transfers. The UHC representative stated that the appellant was previously approved for 15 minutes a day for PCA assistance with transfers, so this was a reduction of 5 minutes a day.

The appellant's representative stated that she is her mother's and father's PCA and cannot pay the rent with the reduced hours. The appellant's representative stated that last year's hours were good and this year she thought she'd get more hours or the same, not less. The appellant's representative stated that she lives in a four room apartment with her parents and she pays the rent. The appellant's representative noted that her parents receive Social Security income. The appellant's representative stated that the appellant's knee and foot bother her and she uses a cane. The appellant's representative stated that she helps the appellant to shower, and she cooks, and does the wash.

**Walking/Ambulation:** The nurse evaluator wrote that the appellant demonstrated ambulation throughout the apartment; she held a cane in one hand and her PCA held her other arm for stability. (Exhibit 11, p. 2). The UHC representative testified that the appellant requires limited assistance with ambulation and 30 minutes a week was approved for PCA assistance with ambulation. The UHC representative stated that the appellant was previously approved for 20 minutes a day for PCA assistance with ambulation, but based on the nurse's in-house assessment, this time is longer than ordinarily required for someone with the appellant's functional limitations. The UHC representative stated that 4 minutes a day, or 28 minutes a week, was approved for PCA assistance and the number was rounded up to 30 minutes a week.

The appellant's representative stated that the appellant does not walk that much because the apartment is not that big. The appellant's representative stated that she helps the appellant with exercises recommended by the appellant's physical therapist.

**Dressing:** The nurse evaluator wrote that the appellant demonstrated the ability to raise her arms up, but could only raise the right arm part way due to shoulder pain; the PCA reported to the nurse evaluator that she holds the appellant's right arm and puts the shirt over both arms, and the appellant pulls it down; appellant is unable to hook/unhook bra, is unable to bend at the waist, and is unable to lift legs up to arm level. (Exhibit 11, p. 3). The nurse evaluator noted that the appellant's PCA reported that she puts the appellant's underwear and pants over her feet and pulls them up to above the knee and the appellant pulls them to her waist. (Exhibit 11, p. 3). The UHC representative testified that the appellant requires extensive assistance with dressing, that is the PCA assists with 75% of the task. The UHC representative stated that the appellant was approved for 14 minutes a

day (rounded up to 100 minutes a week) for PCA assistance with dressing and undressing. The UHC representative stated that the appellant was previously approved for 20 minutes a day for PCA assistance with dressing/undressing, but the nurse evaluator observed that the appellant could assist with some parts of dressing/undressing and the time was reduced to 14 minutes a day.

The appellant's representative stated that the appellant has arthritis and cannot pull her pants up, button her clothes, or don/doff socks. The appellant's representative stated that the appellant has lymphedema which causes pain in one hand and the PCA has to be careful and gentle when assisting with dressing. The appellant's representative stated that it takes 20 minutes to get the appellant dressed.

Toileting: The nurse evaluator wrote that the appellant demonstrated transferring on/off the toilet with her PCA holding her under the arm to help her sit down on the toilet seat and to pull her up to a standing position; the appellant demonstrated using the bidet to clean herself after a bowel movement and the PCA reported that the appellant can wipe herself as long as she is supervised and reminded due to Alzheimer's disease; the appellant needed some assistance with pulling up her underwear and pants; the PCA denied the appellant is ever incontinent and the appellant does not wear incontinent products. (Exhibit 11, p. 4). The UHC representative testified that the appellant requires limited assistance with toileting and was approved for 21 minutes a week for PCA assistance with transferring on/off the toilet and 21 minutes a week for PCA assistance with clothing adjustment for a total of 42 minutes a week rounded up to 45 minutes a week, for PCA assistance with toileting. The UHC representative stated that the appellant was previously approved for 11 minutes a day for PCA assistance with toileting.

The appellant's representative stated that the landlord will not allow grab bars in the bathroom. The appellant's representative stated that the appellant is unable to assist with pulling her pants down and has to hold onto the sink and the PCA while the PCA assists her in getting on and off the toilet. The appellant's representative stated that the appellant uses the bathroom 7 to 8 times a day due to the medication she takes. The appellant's representative stated that the appellant takes her time in the bathroom and can be in there for 10 minutes at a time.

The UHC representative stated UHC would consider the appellant as requiring extensive assistance with toileting, which allows for 28 minutes a week for PCA assistance with the task of getting on/off the toilet, and 28 minutes a week for PCA assistance with the task of clothing adjustment, for a total of 56 minutes per week. The UHC representative stated that UHC would round that number up to 60 minutes a week for PCA assistance with toileting.

Personal Hygiene: The nurse evaluator wrote that the appellant demonstrated the inability to raise her right arm up to her head due to shoulder pain, therefore she is unable to wash/dry/brush her hair; the PCA reported that the appellant no longer has the need to shave her legs or armpits and does not wear makeup; the appellant is able to wash her hands and brush teeth at the sink with reminders and supervision for thoroughness. (Exhibit 11, p. 4). The UHC representative testified that the appellant requires extensive assistance for personal hygiene and 8 minutes a day, or 56 minutes a week, was approved for PCA assistance with washing, drying, brushing hair. The UHC representative stated that the appellant was previously approved for 20 minutes a day for PCA assistance with personal

hygiene, but the nurse evaluator reported the appellant is independent with oral care, and washing face and hands.

The appellant's representative stated that she assists with washing the appellant's hair in the shower and assists with other grooming tasks, but does not count how much time it takes to assist with these tasks.

**Bathing:** The nurse evaluator wrote that the appellant demonstrated the ability to transfer into and out of the shower, lifting her legs over the side of the tub while the PCA holds onto her arms for stability due to unsteady gait; the appellant stands in the tub and is able to wash her arms and torso independently if given soapy wash cloth and instructed to do so; the appellant is unable to bend at the waist or lift her legs all the way up to arm's length to reach lower legs/feet and the PCA washes legs and feet. (Exhibit 11, p. 5). The UHC representative testified that the appellant requires limited assistance with bathing and 6 minutes a day, or 42 minutes a week, was approved for PCA assistance with transferring into and out of the shower, and 8 minutes a day, or 56 minutes a week, was approved for PCA assistance with washing the lower body, legs, and feet, for a total of 98 minutes a week (14 minutes a day) for PCA assistance with bathing. (Exhibit 11, p. 5). The UHC representative stated that the appellant was previously approved for 130 minutes a week (18 minutes a day) for PCA assistance with bathing.

The appellant's representative stated that the appellant takes a shower and washes her hair every day and the PCA assists with this task.

**Meal Preparation:** The nurse evaluator wrote that the appellant exhibits an unsteady gait, inability to lift right arm, and shortness of breath with moderate exertion, therefore she is unable to maneuver around the kitchen, lift pots and pans, or get food out of upper or lower cabinets. (Exhibit 11, p. 7). The UHC representative testified that the appellant has great difficulty with meal preparation, which means she is dependent for this task. The UHC representative stated that 210 minutes a week was approved for PCA assistance with meal preparation and 35 minutes a week was approved for PCA assistance with set up and clean up, for a total of 245 minutes a week, or 35 minutes a day. (Exhibit 11, p. 7). At the hearing, UHC agreed to approve 45 minutes a day for PCA assistance with meal preparation and clean up; 10 minutes for breakfast, 15 minutes for lunch, and 20 minutes for dinner. The UHC representative stated that because the appellant lives with family members, including another recipient of PCA services, half of the time, or 22.5 minutes a day (157.5 minutes a week), is attributed to the appellant. The UHC representative noted that the appellant's spouse is approved for 17.75 hours a week in day/evening PCA services and 14 hours a week for a nighttime attendant. The UHC representative stated that when other families in the home are also receiving PCA services, it is considered a companion case and IADLs are shared tasks. The appellant's representative stated that her parents have different diets and prefer Persian food. The appellant's representative stated that it takes about 15 minutes to make breakfast and 40 minutes for lunch and dinner. The appellant's representative noted that she makes kabobs, rice, and soup and it takes time to cook the meals.

**Housekeeping:** The UHC representative stated that 90 minutes a week was approved for PCA assistance with housekeeping, out of which 45 minutes a week was counted toward the appellant's

PCA time. (Exhibit 11, p. 8). The appellant's representative agreed with this time and this issue is considered withdrawn and dismissed.

**Laundry:** The nurse evaluator wrote that the appellant exhibits shortness of breath with moderate exertion, unsteady gait, complains of pain, is morbidly obese and has confusion, therefore she is not able to partake in any part of laundry tasks. (Exhibit 11, p. 9). UHC determined that the appellant has great difficulty and is therefore dependent for laundry assistance. The appellant was approved for 60 minutes a week for PCA assistance with laundry including, 10 minutes to gather and sort laundry, 10 minutes for hand washables, 10 minutes for hanging to dry or ironing, 10 minutes for folding and putting clothes away, 10 minutes for loading and unloading clothing, and 10 minutes to transport clothes to the washer/dryer. (Exhibit 11, p. 8). Because this is a companion case, laundry is a shared IADL and 30 minutes a week was counted toward the appellant's PCA time. (Testimony).

The appellant's representative stated that the washer and dryer are in the apartment and she does the laundry for both her parents.

**Managing Medication:** The nurse evaluator wrote that the appellant is oriented to person only and is unable to understand what medications she takes and when to take them. (Exhibit 11, p. 9). UHC determined that the appellant has great difficulty with medication management and is dependent for this task. (Exhibit 11, p. 9). UHC approved 12 minutes a day, or 84 minutes a week for PCA assistance with giving the appellant her twice daily medications. (Testimony). The UHC representative stated that the appellant was previously approved 15 minutes a day for PCA assistance with this task.

The appellant's representative stated that the appellant hates taking her medication and goes slowly when taking them.

**Shopping:** The nurse evaluator wrote that the appellant is unable to partake in any aspect of shopping as she is unable to prepare a list due to language barrier and confusion related to Alzheimer's disease; she is unable to go to the grocery store, walk around, carry items, or put them away due to pain, unsteady gait, and shortness of breath. (Exhibit 11, p. 10). UHC approved 40 minutes a week for PCA assistance with shopping which includes 5 minutes to make a shopping list, 25 minutes for purchase and picking up items, and 10 minutes for putting items away. (Exhibit 11, p. 10). Because this is a companion case, shopping is a shared task and 20 minutes a week was counted toward the appellant's PCA time. (Testimony).

The appellant's representative stated that the food store is not nearby and she sometimes goes shopping twice a week. The appellant's representative stated that she does at least one hour of grocery shopping a week. The UHC representative stated that travel time to the store is not included and 40 minutes is the average amount of time for shopping for 2 people. The UHC representative stated that the appellant was previously approved 35 minutes a week for PCA assistance with this task.

**Transportation:** The nurse evaluator wrote that the appellant is unable to arrange transportation due

to Alzheimer's disease and requires physical assist with ambulation and getting into and out of the car due to pain, shortness of breath, and unsteady gait; all medical providers are in Boston; physician's office provides an interpreter for the appellant. (Exhibit 11, p. 11). The UHC representative stated that the appellant was approved for 25 minutes per week for PCA assistance with transportation to medical appointments, with 2 minutes for arranging transportation, 1 minute for assistance with entering and exiting the vehicle, 1 minute for ambulation, and an average of 21 minutes for travel. (Exhibit 11, p. 11). The UHC representative stated that the appellant reported an average of one medical appointment a month, or 12 per year, and the 25 minutes a week is the total transportation time averaged out over 52 weeks a year. The appellant is approved for over 108 minutes of PCA assistance for each medical appointment (25 minutes x 4.333 weeks in a month).

The appellant's representative stated that she takes the appellant to all her appointments and interprets for her. The appellant's representative stated that the appellant goes to the doctor more than once a month.

## Findings of Fact

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

1. The appellant is a member of United Health Care's Senior Care Options program.
2. The appellant is [REDACTED] years old and has diagnoses of congestive heart failure, osteoarthritis, obesity, Alzheimer's disease, and breast cancer; the appellant lives in a four room apartment with her spouse, who also receives PCA services, and their adult daughter, who is their PCA.
3. The appellant requested 23.5 hours per week in day/evening PCA services.
4. On August 6, 2021, an in-home long term care assessment was completed by a UHC registered nurse evaluator.
5. UHC issued an initial modification notice dated August 20, 2021, approving 12.25 hours per week in PCA services and the appellant filed an internal appeal to UHC.
6. UHC's physician reviewer reviewed the appellant's medical record and upheld the determination of 12.25 hours a week of PCA services for the appellant.
7. UHC denied the internal appeal by notice dated September 16, 2021 and such notice was timely appealed to BOH and is at issue in this hearing.
8. The appellant is independent with bed mobility and demonstrated the ability to turn and reposition herself in bed without physical assistance; and is independent with eating and did not exhibit any difficulties with fine motor coordination.
9. The appellant demonstrated transferring on and off a variety of surfaces in her apartment; she

required the PCA to hold her under the arms and pull her up to a standing position as well as ease her down to sitting due to bilateral knee and back pain, shortness of breath due to heart failure, and morbid obesity.

10. The appellant was approved for 10 minutes a day, or 70 minutes a week for PCA assistance with transfers.
11. The appellant demonstrated ambulation throughout the apartment; she held a cane in one hand and her PCA held her other arm for stability.
12. The appellant was approved for 30 minutes a week for PCA assistance with ambulation.
13. The appellant demonstrated the ability to raise her arms up, but could only raise the right arm part way due to shoulder pain; the PCA holds the appellant's right arm and puts the shirt over both arms, and the appellant pulls it down; appellant is unable to hook/unhook bra, is unable to bend at the waist, and is unable to lift legs up to arm level; the PCA puts the appellant's underwear and pants over her feet and pulls them up to above the knee and the appellant pulls them to her waist.
14. The appellant was approved for 14 minutes a day (rounded up to 100 minutes a week) for PCA assistance with dressing and undressing.
15. The appellant has lymphedema which causes pain in one hand and the PCA has to be careful and gentle when assisting with dressing.
16. The appellant demonstrated transferring on/off the toilet with her PCA holding her under the arm to help her sit down on the toilet seat and to pull her up to a standing position; the appellant demonstrated using the bidet to clean herself after a bowel movement; the appellant can wipe herself as long as she is supervised and reminded due to Alzheimer's disease; the appellant needed some assistance with pulling up her underwear and pants; the appellant is not incontinent and does not wear incontinent products.
17. The appellant was approved for 60 minutes a week for PCA assistance with toileting.
18. The appellant demonstrated the inability to raise her right arm up to her head due to shoulder pain; the appellant no longer has the need to shave her legs or armpits and does not wear makeup; the appellant is able to wash her hands and brush teeth at the sink with reminders and supervision for thoroughness.
19. The appellant was approved for 8 minutes a day, or 56 minutes a week, for PCA assistance with washing, drying, brushing hair.
20. The appellant demonstrated the ability to transfer into and out of the shower, lifting her legs over the side of the tub while the PCA holds onto her arms for stability due to unsteady gait; the appellant stands in the tub and is able to wash her arms and torso independently if given

soapy wash cloth and instructed to do so; the appellant is unable to bend at the waist or lift her legs all the way up to arm's length to reach lower legs/feet and the PCA washes legs and feet.

21. The appellant was approved for 6 minutes a day, or 42 minutes a week, for PCA assistance with transferring into and out of the shower, and 8 minutes a day, or 56 minutes a week, for PCA assistance with washing the lower body, legs, and feet, for a total of 98 minutes a week (14 minutes a day) for PCA assistance with bathing.
22. 45 minutes a day was approved for PCA assistance with meal preparation and cleanup, out of which 22.5 minutes a day is counted toward the appellant's PCA time.
23. 90 minutes a week was approved for PCA assistance with housekeeping, out of which 45 minutes a week was counted toward the appellant's PCA time.
24. 60 minutes a week was approved for PCA assistance with laundry, out of which 30 minutes a week was counted toward the appellant's PCA time; laundry time includes 10 minutes to gather and sort laundry, 10 minutes for hand washables, 10 minutes for hanging to dry or ironing, 10 minutes for folding and putting clothes away, 10 minutes for loading and unloading clothing, and 10 minutes to transport clothes to the washer/dryer.
25. 12 minutes a day, or 84 minutes a week, was approved for PCA assistance with giving the appellant her twice daily medications.
26. 40 minutes a week was approved for PCA assistance with shopping, out of which 20 minutes a week is counted toward the appellant's PCA time.
27. 25 minutes per week was approved for PCA assistance with transportation to medical appointments, with 2 minutes for arranging transportation, 1 minute for assistance with entering and exiting the vehicle, 1 minute for ambulation, and an average of 21 minutes for travel.
28. The appellant reported an average of one medical appointment a month.

## **Analysis and Conclusions of Law**

Obtaining Services When Enrolled in a SCO. When a member chooses to enroll in a senior care organization (SCO) in accordance with the requirements under 130 CMR 508.008, the SCO will deliver the member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, each SCO is required to provide evidence of its coverage, including a complete list of participating providers, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to covered services such as specialty, behavioral health, and long-term-care services.

(130 CMR 508.008(C)).

Senior Care Organization (SCO) – a managed care organization that participates in MassHealth under a contract with the MassHealth agency to provide coordinated care and medical services through a comprehensive network to eligible members 65 years of age or older. SCOs are responsible for providing enrolled members with the full continuum of Medicare- and MassHealth-covered services.

(130 CMR 610.004).

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):...

- (2) a decision to deny or provide limited authorization of a requested service, including the type or level of service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(130 CMR 610.032(B)(2)).

The appellant exhausted the internal appeal process offered through UHC, and thus is entitled to a fair hearing pursuant to the above regulations. As MassHealth's agent, UHC is required to follow MassHealth laws and regulations pertaining to a member's care.

MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for prior authorization to be approved. 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 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.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A), (B), (C)).

#### Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or 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 PCA services; and

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

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM 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 PCA 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(130 CMR 422.410).

Noncovered Services: MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

(A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;

(B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;

(C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;

(D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;

(E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;

(F) services provided by family members, as defined in 130 CMR 422.402; or

(G) surrogates, as defined in 130 CMR 422.402.

(130 CMR 422.412).

The appellant's representative did not dispute the time approved for PCA assistance with housekeeping and withdrew the appeal of that issue. The appeal is dismissed as to time approved for PCA assistance with housekeeping. (130 CMR 610.035(A)(2), (8)).

The appellant requires the PCA to assist her with standing and sitting and requires some assistance with stability while ambulating. The appellant lives in a 4 room apartment and thus the need for assistance with ambulation is limited by space. UHC approved 10 minutes a day for PCA assistance with transfers and 4 minutes a day for PCA assistance with ambulation for a total of 14 minutes a day. The appellant's PCA stated that she assists the appellant with exercises, however

assistance with active exercise is not a covered service under the PCA program. (130 CMR 422.410(A)(5)). Based on the evidence submitted at the hearing and the appellant's functional ability, 14 minutes a day is reasonable for PCA assistance with transfers and ambulation.

The appellant can raise her left arm but can only raise her right arm part way due to shoulder pain, and she needs assistance with hooking her bra and pulling her shirt over her head. The appellant also needs assistance with getting her underwear and pants over her feet and halfway up her legs and needs assistance putting on socks. It would take only minutes to hook a bra, pull a shirt over the appellant's head, and pull underwear and pants over her feet to her knees. UHC approved 14 minutes a day (rounded up to 100 minutes a week) for PCA assistance with dressing and undressing and based on the evidence, such time is reasonable based on the appellant's functional ability.

The appellant needs to hold onto the PCA when transferring onto and off of the toilet. The appellant requires reminders for wiping herself, however supervision and cueing are not covered services under the MassHealth PCA program. (130 CMR 422.412). The appellant was approved for 8 minutes a day (rounded up to 60 minutes a week) for PCA assistance with getting on and off the toilet, and clothing adjustment. The appellant's representative stated that the appellant takes her time in the bathroom and can be in there for 10 minutes at a time, however time spent waiting for the appellant to use the toilet is not hands on assistance and is not included in the PCA time for task. 8 minutes a day is reasonable for assistance onto and off of the toilet and assisting with pulling up pants after toileting and is supported by the evidence in the record.

The appellant cannot raise her right arm up to her head due to shoulder pain, therefore she is unable to wash/dry/brush her hair. UHC approved 8 minutes a day for PCA assistance with washing, drying, and brushing the appellant's hair. The appellant is able to wash her hands and brush her teeth without assistance. The appellant's PCA washes her hair in the shower and 8 minutes is a reasonable amount of time for assistance with washing, drying and brushing the appellant's hair. There was no evidence submitted to support why 8 minutes a day is insufficient for these tasks.

The appellant can transfer into the bath, lifting her legs over the side of the tub while the PCA holds her arms for stability. The appellant is able to stand in the shower and wash her upper body, but requires assistance for washing her lower body. UHC approved 6 minutes a day for PCA assistance with transferring into and out of the shower, and 8 minutes a day for PCA assistance with washing the appellant's lower body, legs, and feet, for a total of 14 minutes a day for PCA assistance with bathing (plus the 8 minutes a day for PCA assistance with washing, drying, and brushing hair). Based on the appellant's functional ability as observed by the UHC nurse evaluator, 14 minutes a day is sufficient for PCA assistance with transferring the appellant into/out of the tub and washing her lower body.

UHC approve 45 minutes a day for PCA assistance with meal preparation and clean up; 10 minutes for breakfast, 15 minutes for lunch, and 20 minutes for dinner. Time spent waiting for food to cook is not hands on assistance and is not included in the time approved for PCA assistance with meal preparation. Per MassHealth regulations, 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. (130 CMR 422.410(C)(1)). Further, when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis. (130 CMR 422.410(C)(2)). The appellant lives with her daughter and spouse. The appellant's spouse is unable to assist with meal preparation due to a disability, however because the appellant lives with her daughter, it is expected that her daughter will provide assistance with most IADLS and routine meal preparation should include the needs of the appellant. That is, the appellant's daughter should include the appellant when the daughter is preparing her own meals. Although in this case, the appellant's daughter also happens to be her PCA, she is first a family member with whom the appellant lives. Further, because the appellant's spouse receives PCA services, PCA time for meal preparation is calculated on a shared basis. 45 minutes a day, half of which is counted toward the appellant's PCA time, is sufficient for PCA assistance with meal preparation in light of the fact that the appellant lives with a family member and should be included in the routine meal preparation for the family.

Laundry is an IADL and the appellant lives with a family member, thus the family's routine laundry should include the needs of the appellant. UHC approved 60 minutes a week for laundry. The washer/dryer is in the apartment and laundry for two people should take no more than a few minutes for each load. UHC allowed 10 minutes to gather and sort laundry, 10 minutes for hand washables, 10 minutes for hanging to dry or ironing, 10 minutes for folding and putting clothes away, 10 minutes for loading and unloading clothing, and 10 minutes to transport clothes to the washer/dryer. The time approved is more than sufficient to meet the appellant's weekly laundry needs, especially since the appellant's routine laundry should be included with the appellant's daughter's laundry.

The appellant takes medication twice a day and UHC approved 12 minutes a day for the PCA to hand the appellant her medications. The appellant's representative stated that the appellant hates taking her medication and goes slowly when taking them. Time spent waiting for the appellant to take and swallow her medications is not hands on assistance and not included in the time for task for PCA assistance with medications. 12 minutes is more than sufficient for PCA assistance with handing the appellant her medications twice a day.

Shopping is an IADL and because the appellant lives with family members, i.e. her daughter, the daughter must provide assistance with most IADLS per the MassHealth regulation at 130 CMR 422.410(C)(1). The appellant's routine shopping should be included with her daughter's shopping. In addition, UHC approved 40 minutes per week for PCA assistance with any non-routine shopping needs of the appellant. Travel time is not included in the hands on PCA assistance with this task. 40 minutes, in addition to routine shopping included with the family's shopping, is sufficient to meet the appellant's shopping needs and there was no evidence presented at the hearing to refute this. Because this is a companion case, shopping is a shared task and 20 minutes a week was counted toward the appellant's PCA time.

At the in-home assessment, it was reported that the appellant had a medical appointment once a month, or 12 times per year. UHC approved 25 minutes per week for PCA assistance with transportation to medical appointments, with 2 minutes for arranging transportation, 1 minute for assistance with entering and exiting the vehicle, 1 minute for ambulation, and an average of 21

minutes for travel. The appellant does not have a medical appointment once a week, but the medical transportation time was averaged out to be included in the total weekly PCA hours. The appellant is actually approved for over 108 minutes of PCA assistance for each monthly medical appointment (25 minutes x 4.333 weeks in a month). The appellant's representative stated that the appellant has more than 12 medical appointments a year. If the appellant's situation has changed since the in-house assessment in August, 2021, documentation of such change should be submitted to UHC so that they can re-evaluate the appellant's need for medical transportation. 108 minutes of PCA assistance with each medical visit is sufficient to meet the appellant's needs. Time spent waiting for the appointment or while the appellant is in the appointment itself is not included in the hands on PCA assistance with transportation to medical appointments.

The appellant's representative's testimony centered more around her need for more hours to make more money than the actual time for task for assistance with each allowed ADL and IADL. PCA time is determined based on the medical necessity, as outlined above, for assistance with certain ADLs and IADLs for the MassHealth member, taking into account the MassHealth member's functional ability and living situation. The appeal is denied.

## **Order for SCO**

Proceed with the modifications set forth in the notice dated August 20, 2021.

## 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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Patricia Mullen  
Hearing Officer  
Board of Hearings

cc: