

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in Part;
Denied in Part

Appeal Number: 2178294

Decision Date: 01/26/2022

Hearing Date: 01/13/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:



Appearances for UnitedHealthcare:

Dr. Cheryl Ellis, Medical Director
Joanne Sullivan, Sr. Health Care Services Dir.



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

APPEAL DECISION

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Prior Authorization
Decision Date:	01/26/2022	Hearing Date:	01/13/2022
UHC's Reps.:	Dr. Cheryl Ellis Joanne Sullivan	Appellant's Reps.:	██████████
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

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 October 18, 2021, UnitedHealthcare, a Senior Care Options (SCO) managed care program that contracts with MassHealth, notified the appellant that it had denied her internal appeal regarding her request for additional personal care services (Exhibit 1). On October 27, 2021, UnitedHealthcare notified the appellant that it had denied her internal appeal regarding her request for additional homemaker services (Exhibit 2). The appellant filed a timely appeal of both determinations with the Board of Hearings (130 CMR 610.015(B); Exhibit 3). On November 3, 2021, the Board of Hearings dismissed the appeal because the appellant did not provide copies of the notices prompting the appeal (Exhibit 4). The appellant submitted the notices, the dismissal was vacated, and hearing was scheduled for January 13, 2022 (Exhibit 5). Denial or modification of a request for services is a valid basis for appeal (130 CMR 610.032).

Action Taken by UnitedHealthcare SCO

UnitedHealthcare SCO modified the appellant's request for 5 personal care service hours per week, instead approving 3.5 day hours per week, and modified the appellant's request for 13 homemaker service hours per week, instead approving 6.75 hours per week. It then denied her internal appeals of these initial decisions.

Issue

The appeal issue is whether the evidence supports UnitedHealthcare's authorization of 3.5 personal care service hours per week and 6.75 homemaker service hours per week.

Summary of Evidence

The UnitedHealthcare (UHC) medical director, Dr. Cheryl Ellis, appeared at the hearing by phone and offered the following factual background through testimony and documentary evidence: The appellant is a female in her early 80s who has been a UHC SCO participant for several years. She has diagnoses that include a history of 2006 liver transplant, hypertension, osteoporosis, spinal stenosis, sleep apnea, and Parkinson's disease. She came to the UHC SCO program with the following weekly service hours in place: 5 personal care service hours and 13 homemaker service hours. Although telephonic assessments in July 2018 and August 2021 indicated that a reduction in these hours was in order, UHC did not reduce the hours until now.¹

Dr. Ellis testified that a registered nurse from UHC completed the current assessment in the appellant's home on August 30, 2021. The nurse observed her performing her activities of daily living. Based on the nurse's observations, the recommendation was for 3.5 personal care hours per week, and 6.75 homemaker hours per week. Dr. Ellis testified that she then reviewed the record and determined that in accordance with regulations, the personal care and homemaker hours would be reduced as recommended, from September 2021 through September 2022.

Dr. Ellis testified that UHC uses a functional tool in its assessments; this tool includes a range of functional levels and addresses each task that makes up an ADL or IADL. This allows for an accurate assessment of how many total minutes it takes to complete each component of a task. Dr. Ellis reviewed each of the ADLs for which the appellant requires assistance and testified to the amount of time that UHC determined is necessary, including the level of assistance she requires. She explained that an individual is considered independent with a task when the member requires 0% physical help or standby safety or occasional help. Further, an individual is considered to require limited assistance when the member is able to perform part of the activity but requires up to 50% physical assistance to complete the task, "extensive" assistance when the caregiver completes 75% of the task, and the member can do 25%, and "maximal" assistance when the caregiver completes 80-90% of the task and the member does 10-20%. The individual ADL task areas are as follows:

¹ Dr. Ellis explained that UHC chose not to reduce the hours during the height of the COVID-19 pandemic.

Activity	Frequency	Mins/Week Approved	Mins/Week Previously	Comments in Evaluation and Task Breakdown ²
Bed mobility (0 – 20 min/day) Repositioning body (non-ambulatory) (Independent)	7 days/week, 6 times/day	0	0	Member demonstrates independence in repositioning and turning side to side in bed.
Transfers (Excludes bath/toilet) (0 – 20 min/day) Moving to and from surfaces (bed, chair, wheelchair, standing) (Independent)	7 days/week, 6 times/day	0	0	Member was observed moving from a low seated position to standing independently from bed to chair during F2F visit with no assistive devices.
Walking/ambulation (Locomotion) (0 – 20 min/day) Walking or propelling in wheelchair (Independent)	7 days/week, 7 times/day	0	35	Member demonstrates independence in ambulation inside her home with no assistive devices. Member observed with an unsteady gait. Member has a walker for outdoor ambulation due to unsteady gait on uneven surfaces and step off and on curbs [sic] due to leg and back pain. Member does not walk up/downstairs.
Dressing (0 – 20 min/day) Dressing/undressing above the waist (shirt, bra) Dressing/undressing below the waist (under garments, pants, belt, skirt and shoes) (Independent)	7 days/week, 2 times/day	0	115 (total)	Member demonstrated being able to raise hands above head and can dress/undress above the waist and put shirt/bra on. Member observed reaching down to the ground below the waist in a seated position and can dress and undress below the waist to put on undergarments, pants, belt, skirt, and or shoes. Member completes these tasks slowly and member wears oversized clothing so she is able to put her shirt on more easily. Member also wears elastic band pants and slide on shoes.
Eating (0 – 30 min/day) (Independent)	7 days/week, 2 times/day	0	0	Member was observed bringing her hands to mouth during the visit and can eat food and drink independently. Member denies any issues with swallowing.
Toileting	7 days/week,	0	70 (total)	Member demonstrated ability to transfer on and off toilet,

² The comments and task breakdowns are found on the assessment tool completed by UHC. In addition, the digital version of the spreadsheet displays information about the guidelines for each task when the cursor hovers over the cell for the relevant activity.

(0 – 30 min/day) Transfer on/off toilet Cleaning self after toilet use Change pad, diaper, devices, clothing Adjust clothing (Independent)	7 days/week 7 times/day			motioned ability to clean self after toilet use, and change and adjust clothing as needed independently. Member denied incontinence. Member has grab bars around the toilet to help with this.
Personal hygiene (Grooming) (0 – 30 min/day) Combing/braiding and washing hair (Limited assistance) (Max time = 4 min) Shaving (N/A) Makeup (N/A) Wash hands/face/teeth (Independent)	7 days/week, 7 times/day	28 (total) 7	140 (total)	Member was observed able to raise hands above head but member is not able to demonstrate washing and combing hair due to visible right arm tremors. Member also reports neck/arm and back pain when trying to complete the task by raising hands above her head. Member requires assistance with combing and washing hair 7 days a week. Member observed bringing hands to face and reports ability to wash face, hands and teeth independently.
Bathing (0 – 30 min/day) Transfer in and out of tub or shower (Extensive assistance) (Max time = 8 min) Washing arms (Limited assistance) (Max time = 6 min) Washing chest, abdomen and/or perineal area (Limited assistance) (Max time = 6 min) Washing upper/lower legs (Limited Assistance) (Max time = 6 min)	7 days/week, 1 time/day	182 (total) 56 42 42 42	210 (total)	Member was not able to demonstrate transferring and stepping in and out of tub as members PC worker was not present. Member demonstrated how she holds onto the grab bar and her PC worker then lifts her legs over the threshold of the tub as it is too high for member to step over. Member then sits in the shower. Member requires limited assistance to wash arms, chest, abdomen and peri area as member has tremors and pain. Member is not able to hold the soap or open the bottles due to the tremors. Member finds it difficult to wash upper body because of back pain when she does any repetitive motion or twisting. Member requires limited assistance to wash upper and lower legs due to back pain from spinal stenosis. Member bathes 7 days a week.

Dr. Ellis testified that the decreases in time allowed for some of these tasks from the previous year do not necessarily reflect improvement in the appellant's functional ability, but rather capture an effort to document the actual length of time per task more accurately.

The appellant appeared at hearing by phone and testified through a Cantonese interpreter. She commented on the above tasks, as follows: On the day of the assessment, her true ability to walk was not accurately reflected. She had trouble controlling her bladder and bowels that day, and therefore had to run to the bathroom during the assessment. She usually does not do this. She uses a cane now, and limps a little when she walks. She agreed that she can get dressed and undressed independently but stated that without help, this task takes her at least an hour. For toileting, she stated that she wears Pull Ups, can walk slowly to the toilet by herself, and once sitting, can manage the rest of the task alone. In the area of grooming, the appellant stated that she cannot help at all with hair washing. She previously used a medicated shampoo but no longer needs this. She estimated that the hair washing task takes 30 minutes each time. For bathing, the appellant stated that she needs help getting in and out of the tub. She needs help washing, but she washes her private areas by herself. She estimated that the time for bathing takes about an hour, but that includes applying lotion after the bath. She has very dry skin due to allergies, and she needs to apply Vaseline and lotion after every bath.

Dr. Ellis also reviewed each of the IADLs for which the appellant requires assistance and testified to the amount of time that UHC determined is necessary as well as the level of assistance she requires. She explained that an individual is considered to have "no difficulty" if independent with the task, "some difficulty" if the member needs some help, is very slow, or fatigued, and "great difficulty" if little or no involvement in the activity is possible. The individual IADL task areas are as follows:

Activity	Frequency	Mins/Week Approved	Mins/Week Previously	Comments in Evaluation and Task Breakdown ³
Meal preparation (0 - 45 min/day)	7 days/week	245 (total)	315 (total)	Member observed not being able to stand for long periods of time or in order to prepare meals i.e. cut food, open jars and hold any pots and pans. Member has great difficulty in food preparation, set up and clean up due to tremors, and leg and back pain. Member can use microwave but cannot prepare cold or hot meals and does not participate in any of the meal prep tasks. Member's HMK prepares all meals.
Meal preparation (including cutting food, puree and tube feedings)		210		
Plate, utensil set up and clean up		35		
(Great difficulty) (Max time = 30)				
Housework (0 - 90 min/week)	1 day/week	80 (total)	90 (total)	Member reports some difficulty cleaning up after personal tasks such as wiping counter tops. Member has great

³ The comments and task breakdowns are found on the assessment tool completed by UHC. In addition, the digital version of the spreadsheet displays information about the guidelines for each task when the cursor hovers over the cell for the relevant activity.

Clean up after personal tasks (Some difficulty) (Max time = 20)		20		difficulty with sweeping, mopping, vacuuming, making and stripping the bed due to back and leg pain and tremors. Member is not able to bend, lift, carry, push or pull items in order to complete this task.
Sweeping, mopping, vacuuming (Great difficulty) (Max time = 30)		30		
Making and stripping bed (Great difficulty) (Max time = 30)		30		
Laundry (0 – 90 min/week)	1 day/week	40 (total)	100 (total)	Member reports great difficulty in gathering, sorting clothing, hand washing, hanging to dry, ironing, folding, putting away, loading and unloading and transporting laundry due to unsteady gait, tremors, leg and back pain. Member eligible for laundry service and it is in place. Member is not able to bend, lift, carry, push or pull items in order to complete this task. Member is not able to complete this task in a seated position due to tremors, back and leg pain. Member's HMK gathers and sorts, does hand washables, hangs clothes to dry and irons clothing and folds and puts clothing away when they arrive from the laundry service.
Gathering and sorting clothing		10		
Hand washables		10		
Hanging to dry or ironing clothes		10		
Folding and putting away clothes (Great difficulty) (Max time = 40)		10		
Shopping (0 - 40 min/week)	1 day/week	35 (total)	30 (total)	Member can independently prepare a shopping list, but has great difficulty to purchase, pick up items and put shopping away due to unsteady gait, tremors, back and leg pain. Member is not able to bend, lift, carry, push or pull items in order to complete this task.
Preparation of shopping list (No difficulty) (Max time = 0)		0		
Purchase and picking up items (food, personal hygiene, etc.) (Great difficulty) (Max time = 25)		25		
Putting shopping away (Great difficulty) (Max time = 25)		10		

Dr. Ellis reiterated that the decreases in time allowed for some of these tasks do not necessarily reflect improvement in the appellant's functional ability, but rather capture an effort to document the actual length of time per task more accurately. She noted that more time was given for certain activities, such as shopping.

The appellant testified that several of her health problems have not been documented. She has a compressed nerve in her neck. She needs surgery on her right knee but can't have it done because her children are not available to help after surgery. She has ankle problems. She also has Parkinson's disease that causes shaky hands, and anemia that causes her to be dizzy. She is upset and surprised by the reduction of service hours. In the area of meal preparation, she stated that she eats Cantonese food; Cantonese cooking is very different from Western cooking. She doesn't eat Western food at all. To cook her meals, many vegetables are used, all of which must be thoroughly washed, chopped, and cooked. Rice must be prepared as well. She estimated that dinner preparation takes about one hour. She cannot help at all due to her various health problems. When the appellant's homemaker is not there, she leaves food for her. The appellant testified that she cannot help at all with housework, even with lighter tasks such as dusting. For laundry, the appellant stated that she was previously able to do her own laundry. Now, severe back pain prevents her from doing anything related to this task. In the area of shopping, the appellant stated that everything takes longer because of the pandemic. The homemaker needs time to look around, and waiting in line takes a long time because there is usually only one cashier.

Findings of Fact

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

1. The appellant, a female in her early 80s, is a UHC SCO member.
2. The appellant joined the UHC SCO program several years ago with the following weekly service hours in place: 5 personal care service hours and 13 homemaker service hours.
3. The appellant has diagnoses that include a history of 2006 liver transplant, hypertension, osteoporosis, spinal stenosis, sleep apnea, and Parkinson's disease.
4. The appellant lives alone.
5. A registered nurse from UHC completed the current assessment in the appellant's home on August 30, 2021. Based on the assessment, UHC reduced the appellant's service hours to 3.5 personal care hours per week, and 6.75 homemaker hours per week.
6. The appellant internally appealed both UHC determinations; UHC upheld both initial determinations.
7. The appellant then appealed these denials to the Board of Hearings.
8. UHC approved no time for personal care assistance with bed mobility, transfers, walking, dressing, eating, or toileting based on a determination that the appellant is independent with these tasks.

- a. The appellant had been previously approved for 35 minutes per week for assistance with ambulation.
 - b. The appellant was observed at the assessment ambulating in the home with no assistive devices.
 - c. The appellant has an unsteady gait and now walks with a cane.
 - d. The appellant had been previously approved for 115 minutes per week for assistance with dressing; the appellant stated that although it takes her a long time, she can complete this task independently.
 - e. The appellant had been previously approved for 70 minutes per week for assistance with toileting; the appellant stated that although she is slow, she can complete this task independently.
9. UHC approved 28 minutes per week for personal care assistance with grooming (washing hair), and approved no time for all other grooming tasks. The approval of 28 minutes was for 7 episodes per week (4 minutes per episode), and based on a determination that the appellant needs limited assistance to complete the hair washing task.
- a. The appellant had been previously approved for 140 minutes per week for assistance with general grooming.
 - b. During the recent assessment, the nurse noted that the appellant was not able to demonstrate washing and combing hair due to visible right arm tremors, and that she reported neck, arm, and back pain when trying to complete the task by raising hands above her head.
 - c. The appellant confirmed that she cannot assist with hair washing.
 - d. The appellant did not comment on her ability to wash her hands and face, and/or to brush her teeth.
 - e. For grooming tasks, UHC allows a maximum of 4 minutes per task for members who need limited assistance, 8 minutes per task for members who need extensive assistance, and 10 minutes per task for members who need maximal assistance.

10. UHC approved 182 minutes per week for personal care assistance with bathing.

- a. The breakdown of the time was transferring in and out of the tub/shower (8 minutes per day/56 minutes per week), washing arms (6 minutes per day/42 minutes per week), washing chest/abdomen, and/or perineal area (6 minutes per day/42 minutes per week), and washing upper/lower legs (6 minutes per day/42 minutes per week).
- b. The appellant was previously approved for 210 minutes per week for this task.
- c. The appellant is dependent for all aspects of bathing except that she independently washes her private areas.
- d. The appellant estimated the time for bathing as one hour, but included Vaseline and lotion application in this time.

11. UHC approved 245 minutes per week for homemaker assistance with meal preparation.

- a. The task breakdown is 210 minutes per week for meal preparation and 35 minutes per week for utensil set up and cleanup.
- b. The appellant was previously approved for 315 minutes per week for this task.
- c. The appellant is totally dependent for meal preparation, but has the ability to use the microwave.
- d. The appellant eats Cantonese food only.

12. UHC approved 80 minutes per week for homemaker assistance with housework.

- a. The task breakdown is clean up after personal tasks (20 minutes per week), sweeping, mopping, vacuuming (30 minutes per week), making and stripping bed (30 minutes per week).
- b. The appellant was previously approved for 90 minutes per week for this task.
- c. The appellant lives alone and cannot assist with housework at all due to her unsteady gait, tremors, and pain.
- d. The time range for housework is up to 90 minutes per week.

13. UHC approved 40 minutes per week for homemaker assistance with laundry.

- a. The breakdown of this task is gathering and sorting clothing (10 minutes per week), hand washables (10 minutes), hanging to dry or ironing clothes (10 minutes), and

folding and putting away clothes (10 minutes);

- b. The appellant was previously approved for 100 minutes per week for this task.
- c. The appellant now uses a laundry service.
- d. The appellant is totally dependent for laundry.

14. UHC approved 35 minutes per week for homemaker assistance with shopping.

- a. The task breakdown is preparation of shopping list (0 minutes per week), purchase and picking up items (25 minutes), putting items away (10 minutes).
- b. The appellant was previously approved for 30 minutes for this task.
- c. The appellant is not able to assist with any shopping due to her unsteady gait, tremors, back and leg pain.

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.

In this case, the appellant has appealed UHC's decision to modify her request for personal care and homemaker services, and has appropriately exhausted all remedies available through UHC's internal appeals process (130 CMR 610.032(B)(2); 508.006(B)).

UHC provides coverage for both personal care and homemaker services through the Home Care Program. The purpose of the Home Care Program is to assist elders in the Commonwealth of Massachusetts to secure and maintain maximum independence in their home environment. 651 CMR 3.00 sets forth the functions and responsibilities of providers of Home Care Program Services under agreement with or using funds provided by the Commonwealth.

UHC, through its Aging Services Access Point (ASAP), determines eligibility for the Home Care Program, which includes application requirements, age and residency requirements, and financial eligibility requirements (651 CMR 3.04). MassHealth members who meet Home Care Program eligibility criteria under 651 CMR 3.04 shall be eligible to receive Home Care Program services provided that such services are determined to be non-duplicative with other MassHealth services (651 CMR 3.04(1)(a)(1)).

Additionally, a long term care assessment shall be completed to determine eligibility for the Home Care Program; the assessment will include a functional impairment level determination based on the applicant's inability to perform ADLs and IADLs. Once eligibility has been established, the consumer has access to a variety of services, including but not limited to personal care and homemaker services, defined at 651 CMR 3.02 as follows:

Personal Care. Hands-on assistance, prompting or cueing, and supervision to assist a Consumer to perform Activities of Daily Living provided in accordance with the Personal Care Guidelines issued by Elder Affairs.

Homemaker Services. Services to assist a client with Instrumental Activities of Daily Living provided in accordance with homemaker standards issued by Elder Affairs.

ADLs are defined as tasks, including the ability to bathe, dress/undress, eat, toilet, transfer in and out of bed or chair, move while in bed, and ambulate inside the home, and management of incontinence. IADLs are defined as basic tasks, including the ability to prepare meals, do housework, do laundry, go shopping, manage medication, ambulate outside the home, use transportation, manage money, and use the telephone (651 CMR 3.02)

UHC also limits coverage to those services that have been determined to be medically necessary. Per 130 CMR 450.204(A), a service is medically necessary if:

- (1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

In this case, UHC approved the appellant for 3.5 personal care hours per week and 6.75 homemaker hours per week. Both authorizations represent a decrease from time previously approved when the appellant was affiliated with another insurer. As explained at hearing, UHC uses an assessment tool that looks at the individual elements of each task and takes a closer look at how long each activity actually takes. While the time for one task was increased in this evaluation, many were decreased. This was a reflection, as the UHC representatives testified, not necessarily of an improvement in the appellant's functional abilities, but of the implementation of the assessment tool. The appellant maintains that she continues to require a lot of assistance in the home due to her many symptoms and diagnoses.

After reviewing the record, I conclude that the evidence supports UHC's reduction of time in some of the areas, but that the appellant has demonstrated medical necessity to restore and/or add time in others.

Personal Care Services

Bed mobility/Transfers/Walking/ambulation: UHC did not approve any time for assistance with bed mobility, transfers, or walking/ambulation. This was based on a determination that the appellant is independent with these tasks. At the August assessment, the appellant was noted to

have an unsteady gait but was observed transferring and ambulating with no assistive devices. The appellant did not specifically dispute these findings. She indicated that she was ambulating faster than usual on the day of the assessment, and noted that she has a small limp and now uses a cane to get around. These facts, while relevant, do not demonstrate that the appellant needs consistent assistance with these three tasks. There is not sufficient evidence of medical necessity to warrant an approval of time for personal care assistance with these tasks.

Dressing: UHC did not approve any time for assistance with this task, based on a determination that the appellant is independent with dressing and undressing. Both the assessment nurse's comments, and the appellant's own testimony, support this determination. The appellant indicated that although this task takes her a long time, she is able to complete it herself. There is not sufficient evidence of medical necessity to warrant an approval of time for personal care assistance with this task.

Eating: UHC did not approve any time for assistance with this task, based on a determination that the appellant is independent. As the appellant did not dispute this determination, there is not sufficient evidence of medical necessity to warrant an approval of time for personal care assistance with this task.

Toileting: UHC did not approve any time for assistance with this task, which is broken down into tasks of transferring, cleaning, and clothing adjustment. The appellant confirmed that although it takes her some time to walk to the toilet, she is independent with all toileting tasks. There is not sufficient evidence of medical necessity to warrant an approval of time for personal care assistance with this task.

Grooming: UHC approved 28 minutes per week for personal care assistance with grooming. The breakdown of time for grooming was combing and washing hair (4 minutes per day, 28 minutes per week), shaving (0 minutes total per week), applying makeup (0 minutes per week), and washing face/hands and brushing teeth (0 minutes per week). UHC approved no time for shaving or applying makeup as they are not applicable; the appellant did not dispute this determination. UHC approved no time for washing hand/face and brushing teeth because it determined that the appellant is independent with these tasks. The appellant did not dispute these findings either. Additionally, UHC authorized 4 minutes per day for assistance with hair washing and combing; this time was based on a determination that the appellant needs limited assistance with this task. During the recent assessment, the nurse noted that the appellant was not able to demonstrate washing and combing hair due to visible right arm tremors, and that she reported neck, arm, and back pain when trying to complete the task by raising hands above her head. The appellant also confirmed at hearing that she cannot assist with this task at all. The evidence therefore reflects that the appellant requires maximal assistance with this task. The assessment tool indicates that 10 minutes may be authorized when a member requires maximal assistance for a grooming task. As hair washing is noted to be completed once per day, seven days per week, the total time should therefore be increased from 28 to 70 minutes per week.

Bathing: UHC approved 182 minutes per week for personal assistance with bathing, which amounts to 26 minutes per day. The breakdown of the time was transferring in and out of the tub/shower (8 minutes per day/56 minutes per week), washing arms (6 minutes per day/42 minutes per week), washing chest/abdomen, and/or perineal area (6 minutes per day/42 minutes per week), and washing upper/lower legs (6 minutes per day/42 minutes per week). These times were based on a determination that the appellant requires extensive assistance (transferring) and limited assistance (washing all areas). These levels of assistance are not consistent with the findings of the assessment nurse. At the assessment, the nurse noted that the appellant could not get in the tub because her caregiver was not present. Further, she noted that the appellant was unable to even *hold* the soap or open bottles due to tremors and pain, and had difficulty washing for these same reasons. These findings reflect that the appellant needs maximal assistance with all bathing tasks. The assessment tool indicates that an individual who requires maximal assistance is allowed 10 minutes for each bathing task. As bathing is noted to be completed once per day, seven days per week, each of the 4 bathing tasks should be allotted 70 minutes per week, and the total time should therefore be increased from 182 to 280 minutes per week.⁴

Homemaker Services

Meal preparation: UHC approved 245 minutes per week for homemaker assistance with meal preparation. The breakdown includes 210 minutes per week for meal preparation (30 minutes per day) and 35 minutes per week (5 minutes per day) for utensil setup and cleanup. The appellant contends that she requires more time because she only eats Cantonese food which takes a long time to prepare. Food preferences are not relevant to a medical necessity determination. However, the assessment makes clear that the appellant has “great difficulty” with all aspects of this task, meaning that little or no involvement in the activity is possible. The appellant’s testimony confirmed this finding. As the UHC’s maximum time range for this task goes up to 45 minutes per day, it does not seem unreasonable that the homemaker would need all of this time to prepare three meals, and to complete setup and cleanup activities. There is sufficient evidence to warrant an increase in the total time for homemaker assistance with this task. The total time should be revised to 315 minutes per week (280 minutes per week for meal preparation, and 35 minutes per week for utensil setup and clean up).

Housework: UHC approved 80 minutes per week for homemaker assistance with housework. The breakdown includes cleanup after personal tasks (20 minutes per week), sweeping, mopping, and vacuuming (30 minutes), and making and stripping the bed (30 minutes). UHC determined that the appellant has some difficulty with cleanup after personal tasks, and great difficulty with the other housework tasks. Although the assessment nurse writes that the appellant has *some* difficulty with cleanup tasks such as wiping down counters, the appellant credibly testified that she has *great* difficulty with all housework tasks and does not participate at all. There is sufficient evidence to

⁴ This time authorization of 280 minutes per week (40 minutes per day) exceeds UHC’s maximum time range for this task (0 - 30 minutes). UHC representatives did not provide any specific testimony regarding this range, which suggests that it is meant as a guideline rather than a strict limit imposed by regulation.

warrant an increase in the total time for homemaker assistance with this task. The total time should be revised to 90 minutes per week (to reflect 30 minutes of assistance with each of the three separate tasks).

Laundry: UHC approved 40 minutes per week for homemaker assistance with laundry. The breakdown of this task is gathering and sorting clothing (10 minutes per week), hand washables (10 minutes), hanging to dry or ironing clothes (10 minutes), and folding and putting away clothes (10 minutes). The appellant now has a laundry service that takes care of the actual laundering of her clothing. The appellant is unable to participate at in any of the other laundry activities, but did not specifically comment on the times authorized for each laundry task. There is insufficient evidence to warrant an increase in time.

Shopping: UHC approved 35 minutes per week for homemaker assistance with shopping. The task breakdown is preparation of shopping list (0 minutes per week), purchase and picking up items (25 minutes), putting items away (10 minutes). The appellant is not able to assist with any of the shopping activities other than preparing the list. The appellant contends that this time is insufficient because of the time needed to travel to the store and to shop for the food, as well as the time spent waiting in line. Because the appellant only eats Cantonese foods, her homemaker is likely familiar with these food items and their location in the grocery store; this should streamline the shopping process. As to the appellant's comment regarding long lines and lack of cashiers, this issue is likely time limited and does not justify an increase in time. There is insufficient evidence to warrant an increase in time.

For the reasons described above, this appeal is approved in part and denied in part.

Order for SCO

Adjust the personal care hours as follows:

- Grooming: Increase the time for washing hair to 70 minutes per week
- Bathing: Increase the time for each bathing task to 56 minutes per week, for a total of 280 minutes per week

Adjust the homemaker hours as follows:

- Meal preparation: Increase the time to 315 minutes per week
- Housework: Increase the time to 90 minutes per week

Recalculate the total service hours in accordance with this decision and send notice of implementation.

Implementation of this Decision

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

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: UnitedHealthcare SCO
Attn: Cheryl A. Ellis, MD
LTC Medical Director
950 Winter St., Suite 3800
Waltham, MA 02451