

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2179001
Decision Date:	2/24/2022	Hearing Date:	01/20/2022
Hearing Officer:	Scott Bernard		

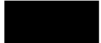
Appearance for Appellant:

*Pro se via telephone*

Appearance for the Integrated Care  
Organization (ICO):

Cassandra Horne, Commonwealth Care Alliance  
(CCA) Appeals and Grievances Supervisor

Interpreter:



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>	Approved	<b>Issue:</b>	ICO Home Maker, Personal Care Agency (HMPC) Services
<b>Decision Date:</b>	2/24/2022	<b>Hearing Date:</b>	01/20/2022
<b>ICO's Rep.:</b>	Cassandra Horne	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Quincy Harbor South		

## 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 October 7, 2021, the ICO denied the appellant's request for Personal Care/Homemaker (PCHM) services, because they were not medically necessary. (See 130 CMR 450.204 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on November 30, 2021. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance by a managed care contractor is a valid ground for appeal. (See 130 CMR 610.032).

## Action Taken by the ICO

The ICO denied the appellant's request for PCHM services because they were not medically necessary

## Issue

The appeal issue is whether the ICO was correct, pursuant to 130 CMR 450.204, in determining that the PCHM services were not medically necessary.

## Summary of Evidence

The ICO representative stated that she was the manager of the appeals department for the ICO. The appellant is an individual under the age 65 who has been enrolled in the ICO's One Care Program since June 1, 2018. (Ex. 5, p. 9).

The ICO performed a Minimum Data Set (MDS) assessment of the appellant by telephone on April 26, 2021. (Ex. 5, pp. 7, 66, 104-105). According to the MDS assessment, the appellant's clinical history includes unsteady gait, generalized anxiety disorder, back pain, failed back syndrome, chronic pain, spondylolisthesis of the lumbar region, anterolisthesis, and right knee pain. (Ex. 5, pp. 7, 48-60). The MDS assessment stated that the appellant needed help with meal making, shopping, housework, laundry, and transportation to appointments. (Ex. 5, pp. 66-67). The MDS assessment also stated that the appellant has 28 hours per week of formal support and that her "[p]artner provides informal support as needed" (emphasis added). (Ex. 5, p. 67). The MDS assessment stated that the appellant received daily skilled nursing (SN) from a visiting nurse association (VNA) for daily medication management and oversight because of her mood disorder and forgetfulness. (Ex. 5, p. 67).

On May 26, 2021, a nurse for the ICO visited the appellant in her home for an evaluation for Personal Care and Home Making (PCHM) services. (Ex. 5, p. 102). The report from this visit stated the following:

Member currently has HHA which is her **girlfriend** that lives with her. Member is alert and oriented, chronically [sic] depressed, **Girlfriend** assists with translation. Member dressed and groomed appropriately. VNA manages medications with daily visits, reports she is very close to visiting nurse and not agreeable to change this process. **Girlfriend** [sic] provided a reminder for PM meds. **Girlfriend** provides meals and housekeeping [sic] as informal support. **Girlfriend** provides transportation, laundry and shopping. Member reports needing assistance with bathing, dressing and shaving legs due to chronic pain. Reports frequent falls but doesn't [sic] report them to CCA. Denies injury from falls. Reports new dx diabetes, started on metformin and prescribed a glucometer. Member has been checking sugars 3-4x/day and overwhelmed. Reviewed log and member sugars are in good control, No hypoglycemia and sugars typically 80-130. Reviewed s/s of hypoglycemia. Suggested CCA HOW for diabetes education is [sic] member desires. Member has not changed diet and still eating concentrated sweets but sugars are in good control despite it. No ED/hosp use. Requesting a new BH therapist.

...

ADL-IADL:

Bathing Limited Assistance

Toileting Independent.

Dressing Limited Assistance.

Transfers needs assist at times r/t pain and spasms.

Bowel Continence Continent.

Bladder Continence Continent

Feeding Independent.

Bed Transfer GF assists as needed.

Telephone Independent.

Travel able to travel in regular transportation.

Shopping Extensive Assistance.  
Meal Preparation Dependent.  
Housework Dependent.  
Laundry Dependent.  
Medication Administration VNA manages and girlfriend reminds in PM (emphasis added). (Ex. 5, p. 102).

On the same date, Pinnacle Home Health Care (the agency) submitted a new referral for services. The agency indicated that the appellant's functional status was that she required "assistance" with bathing (including dressing and grooming), transfers, ambulation, medication assistance in the afternoon, and transportation and was "dependent" for shopping, laundry, and housekeeping.<sup>1</sup> (Ex. 5, p. 68). The agency therefore requested 7 hours (per week) for bathing, 1 hour for transfers, 1 hour for ambulation and .5 hours for medication assistance in the afternoon (since the VNA managed medications in the morning), 1.5 hours for shopping, 1.5 hours for laundry, 1 hour for housekeeping, and 2 hours for transportation to medical appointments. (*Id.*). The agency referral stated that the appellant therefore required a total of 9.5 hours per week of assistance for bathing, transfers, ambulation, and medication assistance and 6 hours per week for shopping, laundry, housekeeping and transportation. (*Id.*).

On July 15, 2021, a Greater Springfield Senior Services Long-Term Service Coordinator (LTSC) performed a Long-Term Services and Supports (LTSS) Assessment and determined the following:

#### **ADLs**

- a) **Mobility in bed** *Needs Assistance*
- b) **Ambulation** *Independent with difficulty despite cane; the member reported 2 falls last month [due to] new foot pain.*
- c) **Dressing/undressing** *Needs Assistance: The member reports her **partner** assists her with dressing and undressing.*
- d) **Eating** *Cueing: The member reported her **partner** will often prompt her to eat due to member's lack of appetite.*
- e) **Personal hygiene** *Needs Assistance: The member reported her **partner** assists her with shaving*
- f) **Bathing** *Needs Assistance: The member needing assistance with her lower half.*

#### **IADLs**

- a) **Meal prep** *Needs Assistance*
- b) **Housework** *Needs Assistance*
- c) **Managing Finances** *Needs Assistance*
- d) **Medication management** *Needs Assistance/Cueing/Supervision: The member reports receiving assistance with medication in the morning from a visiting nurse and at night from her*

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<sup>1</sup> The undersigned could find no definition for the terms "assistance" and "dependent" in the material submitted but language in the referral document indicates that "assistance" means the subject can participate in the activity but needs assistance, and that "dependent" indicates that the subject is unable to do the activity and is therefore dependent. (*See* Ex. 5, p. 68).

- partner.*
- e) **Phone** *Independent*
  - f) **Grocery shopping** *Needs Assistance*
  - g) **Transportation** *Independent* (emphasis of words that are both bolded and italicized added). (Ex. 5, pp. 96-98).

The LTSC observed the appellant laying in her recliner with her feet elevated and that her home was clean. (Ex. 5, p. 97). The appellant's partner<sup>2</sup> was also present in the home. (Ex. 5, p. 97). The LTSC reported that the appellant requires her partner to attend all of her medical appointments because the appellant was Spanish speaking and requires an interpreter. (Ex. 5, p. 98). The member also receives assistance with ADLs and IADLs as well as social and emotional support from her partner. (Ex. 5, p. 98). The LTSC reported that the appellant received daily assistance with medication management from a visiting nurse in the morning, 28 hours per week of HHA services. (Ex. 5, p. 97). The appellant reported seeing her behavioral health therapist on a weekly basis. (Ex. 5, p. 97). The appellant also reported needing another bed rail because she was experiencing increased difficulty with ambulation and requesting an ankle brace. (Ex. 5, p. 98).

A note dated July 27, 2021 indicated that the appellant had HHA services with the agency which would expire on September 8, 2021. (Ex. 5, p. 159). The note indicated that the agency would submit a new authorization for PCHM to replace the appellant's HHA services with a continuation of skilled nursing services. (*Id.*). On July 29, 2021, the agency requested 6 hours per week of homemaking services and 9.5 hours per week of personal care services from September 9, 2021 through February 28, 2022. (Ex. 5, pp. 13-15).

In notices dated August 13, 2021, the ICO denied the request for homemaking services and partially denied the requested time for personal care services, approving 9 hours per week beginning September 9, 2021. (Ex. 5, pp. 20-35). The notice concerning homemaking services stated that the reason for the denial was as follows:

...You had an assessment of your care needs on April 26, 2021. Our records show that you need help with making meals and shopping period you need help with housework and laundry. You need help with transportation to appointments. You live with your **spouse**. Your **spouse** is an informal support. Your **spouse** helps you with these tasks. A service to complete these tasks is not needed. Services must not duplicate care provided by informal support. For these reasons, coverage of Homemaker Service was denied (emphases added). (Ex. 5, pp. 20-21).

The notice cited 107 CMR 11.05, 130 CMR 630.408, 130 CMR 450.204 as the bases for this determination. (Ex. 5, p. 21).

The notice concerning Personal Care services, explained the partial denial as follows:

...You had an assessment of your care needs on April 26, 2021. Our records show

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<sup>2</sup> The LTSC referred to the partner throughout the cited document, and the use of partner throughout this paragraph is meant to reflect that.

that you need supervision for transfers and walking inside. You use a cane. You need limited help with walking outside. You need limited help with bathing and dressing. You need help with medication. You live with your **spouse**. Your **spouse** helps you with medication. The amount of time needed to help you with personal care is 9 hours per week. Service units must not go over the amount needed. For these reasons, coverage of Personal Care (PC) Service was partially denied (emphases added). (Ex. 5, pp. 28-29).

This notice cited 130 CMR 630.421, 130 CMR 630.408, and 130 CMR 450.204 as the basis for this determination. (Ex. 5, p. 29).

The appellant submitted an internal appeal of these decisions in a timely manner<sup>3</sup>, and the ICO issued the Notice of Adverse Action at issue in this appeal, which explained the reasons for the determination as follows:

After careful consideration, the Level 1 Appeal Reviewer agreed with the original decision and denied your request. According to the Level 1 Appeal Reviewer, following [sic] a full and careful review of the provided documentation was performed in the context of the CCA Knowledge Base. CCA will uphold the initial denial for the request of the continuation of 15.5 Personal Care Homemaker (PCHM) hours per week. The initial review for this continuation determined a partial approval of 9 Personal Care (PC) hours per week and no Homemaker (HM) hours per week would be appropriate. Per the guidelines and regulations set forth by Decision Support Tool (DST) number 16 and MNG [Medical Necessity Guideline] number 076. [sic] In order to be eligible to receive Personal Care (PC), you must have a physical, cognitive, or behavioral related disability that prevents you from completing at least one of the following Activities of Daily Living (ADLs) without assistance (cueing, prompting, or hand-on): you require assist with bathing/grooming, dressing, undressing, transfers and mobility. Therefore, you meet the criteria for eligibility of Personal Care (PC) services. Homemaker services from an agency is [sic] provided to you where your disabilities result in a need for Homemaker services in order to live independently and prevent the unnecessary need for hospitalization or institutionalization. You no longer qualify for this service because you have a live-in **spouse** that can manage these tasks. The original decision is upheld, and this Level 1 Appeal is denied. Please continue to work with your care team to report any changes in your Health Status (emphasis added). (Ex. 1).

Regarding the homemaking services denial, the ICO representative stated the following. The ICO's records reported that the appellant had indicated that she lives with her spouse or significant other, which the ICO considered an informal support. Because the appellant had this informal support, it was shown that a homemaking service to complete these tasks was not needed. The ICO representative stated that homemaking services must not duplicate those from informal support and

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<sup>3</sup> The record is unclear as to when the appellant submitted these internal appeals but considering that the August 13 notices both state that the appellant had 60 days to do so, and the notice under appeal is dated less than 60 days after these notices, the internal appeals were clearly timely.

the coverage was therefore denied. The ICO representative stated the ICO representative uses the MassHealth regulations at 130 CMR 630.408 as guidelines here. Specifically, 130 CMR 630.408(G) states that duplicate care provided by another payment source or by a family member or legally responsible individual or non-payable. The ICO representative also cited 130 CMR 450.204(B), which states that a service is medically necessary if 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. An assessment performed on July 15, 2021 reported that the appellant receives informal help from a significant other. It was on this basis that the ICO denied homemaking services.

The ICO representative continued that as far as the personal care services go, the appellant requested 9.5 hours per week. The ICO reduced this to 9 hours per week. The half hour taken away represented the time allotted for medication management. The ICO representative explained that the appellant is receiving medication management through ICO provided skilled nursing visits. the ICO representative stated that although the appellant's significant other is required to help with the appellant's medication, she is not at home during the day. This is the reason the ICO has approved home health aide services, as well as nursing visits.

The appellant testified that she lives with her girlfriend. The appellant stated that her girlfriend is not available to help the appellant all the time because she works. Sometimes the appellant has to ask her neighbor to assist her with shopping, for instance. The appellant stated that for laundry, her girlfriend will help her on the weekends if she is available. The appellant stated that the laundry is not located in her living space and that she must have her laundry washed outside the apartment. The appellant stated that she does not have incontinence. The appellant confirmed that the nursing visits have continued but she also needs more help with mobility because her legs hurt due to arthritis.

## Findings of Fact

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

1. The appellant is an individual under the age 65 who has been enrolled in the ICO's One Care Program since June 1, 2018. (Ex. 5, p. 9).
2. The appellant's clinical history includes unsteady gait, generalized anxiety disorder, back pain, failed back syndrome, chronic pain, spondylolisthesis of the lumbar region, anterolisthesis, and right knee pain. (Ex. 5, pp. 7, 48-60).
3. The ICO performed a MDS assessment of the appellant by telephone on April 26, 2021 and determined the following:
  - a. The appellant needed help with meal making, shopping, housework, laundry, and transportation to appointments;
  - b. The appellant has 28 hours per week of formal support and that her "[p]artner provides informal support as needed.";

- c. The appellant received daily SN services for daily medication management and oversight because of her mood disorder and forgetfulness. (Ex. 5, p. 67). (Ex. 5, pp. 7, 66, 104-105).
4. On May 26, 2021, a nurse for the ICO visited the appellant in her home for an evaluation for PCHM services reporting the following:

Member currently has HHA which is her girlfriend that lives with her. Member is alert and oriented, chronically [sic] depressed, Girlfriend assists with translation. Member dressed and groomed appropriately. VNA manages medications with daily visits, reports she is very close to visiting nurse and not agreeable to change this process. Girlfriend [sic] provided a reminder for PM meds. Girlfriend provides meals and housekeeping [sic] as informal support. Girlfriend provides transportation, laundry and shopping. Member reports needing assistance with bathing, dressing and shaving legs due to chronic pain. Reports frequent falls but doesn't [sic] report them to CCA. Denies injury from falls. Reports new dx diabetes, started on metformin and prescribed a glucometer. Member has been checking sugars 3-4x/day and overwhelmed. Reviewed log and member sugars are in good control, No hypoglycemia and sugars typically 80-130. Reviewed s/s of hypoglycemia. Suggested CCA HOW for diabetes education is [sic] member desires. Member has not changed diet and still eating concentrated sweets but sugars are in good control despite it. No ED/hosp use. Requesting a new BH therapist.

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Feeding Independent.

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Travel able to travel in regular transportation.

Shopping Extensive Assistance.

Meal Preparation Dependent.

Housework Dependent.

Laundry Dependent.

Medication Administration VNA manages and girlfriend reminds in PM. (Ex. 5, p. 102).

5. On the same date, the agency submitted a new referral for services to the ICO indicating that the appellant required "assistance" with bathing (including dressing and grooming),



transfers, ambulation, medication assistance in the afternoon, and transportation; was “dependent” for shopping, laundry, and housekeeping and requesting 7 hours (per week) for bathing, 1 hour for transfers, 1 hour for ambulation and .5 hours for medication assistance in the afternoon (since the VNA managed medications in the morning), 1.5 hours for shopping, 1.5 hours for laundry, 1 hour for housekeeping, and 2 hours for transportation to medical appointments. (Ex. 5, p. 68).

6. On July 15, 2021, a LTSC performed a LTSS Assessment and determined the following:

#### **ADLs**

**Mobility in bed** *Needs Assistance*

**Ambulation** *Independent with difficulty despite cane; the member reported 2 falls last month [due to] new foot pain.*

**Dressing/undressing** *Needs Assistance: The member reports her partner assists her with dressing and undressing.*

**Eating** *Cueing: The member reported her partner will often prompt her to eat due to member’s lack of appetite.*

**Personal hygiene** *Needs Assistance: The member reported her partner assists her with shaving*

**Bathing** *Needs Assistance: The member needing assistance with her lower half.*

#### **IADLs**

**Meal prep** *Needs Assistance*

**Housework** *Needs Assistance*

**Managing Finances** *Needs Assistance*

**Medication management** *Needs Assistance/Cueing/Supervision: The member reports receiving assistance with medication in the morning from a visiting nurse and at night from her partner.*

**Phone** *Independent*

**Grocery shopping** *Needs Assistance*

**Transportation** *Independent* (all emphasis in the original). (Ex. 5, pp. 96-98).

7. The LTSC also reported the following:

- a. The appellant’s partner was present in the home;
- b. The appellant requires her partner to attend all of her medical appointments because the appellant was Spanish speaking and requires an interpreter;
- c. The appellant received daily assistance with medication management from a visiting nurse in the morning, 28 hours per week of HHA services;
- d. The member receives assistance with ADLs and IADLs as well as social and emotional support from her partner;

- e. The appellant also reported needing another bed rail because she was experiencing increased difficulty with ambulation and requesting an ankle brace. (Ex. 5, p. 98).
8. The appellant had HHA services with the agency which would expire on September 8, 2021 and the agency would submit a new authorization for PCHM to replace the appellant's HHA services with a continuation of skilled nursing services. (Ex. 5, p. 159).
9. On July 29, 2021, the agency, on behalf of the appellant, requested 6 hours per week of homemaking services and 9.5 hours per week of personal care services from September 9, 2021 through February 28, 2022. (Ex. 5, pp. 13-15).
10. In separate notices dated August 13, 2021, the ICO denied homemaking services and partially denied the personal care services, approving 9 hours per week beginning September 9, 2021. (Ex. 5, pp. 20-35).
11. The appellant submitted an internal appeal of these notices. (Ex. 1).
12. The ICO issued a denial of the internal appeal on October 7, 2021, which explained the reasons for the determination as follows:

After careful consideration, the Level 1 Appeal Reviewer agreed with the original decision and denied your request. According to the Level 1 Appeal Reviewer, following [sic] a full and careful review of the provided documentation was performed in the context of the CCA Knowledge Base. CCA will uphold the initial denial for the request of the continuation of 15.5 Personal Care Homemaker (PCHM) hours per week. The initial review for this continuation determined a partial approval of 9 Personal Care (PC) hours per week and no Homemaker (HM) hours per week would be appropriate. Per the guidelines and regulations set forth by Decision Support Tool (DST) number 16 and MNG [Medical Necessity Guideline] number 076. [sic] In order to be eligible to receive Personal Care (PC), you must have a physical, cognitive, or behavioral related disability that prevents you from completing at least one of the following Activities of Daily Living (ADLs) without assistance (cueing, prompting, or hand-on): you require assist with bathing/grooming, dressing , undressing, transfers and mobility. Therefore, you meet the criteria for eligibility of Personal Care (PC) services. Homemaker services from an agency is [sic] provided to you where your disabilities result in a need for Homemaker services in order to live independently and prevent the unnecessary need for hospitalization or institutionalization. You no longer qualify for this service because you have a live-in **spouse** that can manage these tasks. The original decision is upheld, and this Level 1 Appeal is denied. Please continue to work with your care team to report any changes in your Health Status (emphasis added). (Ex. 1 ).

## Analysis and Conclusions of Law

MassHealth members younger than 65 years old, except those excluded under 130 CMR 508.004,

must enroll in the Primary Care Clinician (PCC) Plan or a MassHealth-contracted ICO available for their coverage type. (130 CMR 450.117(A); 130 CMR 508.002). MassHealth managed care options include an integrated care organization (ICO) for MassHealth Standard and CommonHealth members who also meet the requirements for eligibility set forth under 130 CMR 508.007. Members who participate in an ICO obtain all covered services through the ICO. (130 CMR 450.117(K)).

A member may enroll in an ICO if he or she meets the following criteria:

(A) Eligibility.

(1) In order to be eligible to enroll in an integrated care organization (ICO), a MassHealth member must meet all of the following criteria, and may not be enrolled or concurrently participate in any of the programs or plans listed in 130 CMR 508.007(F):

- (a) be 21 through 64 years of age at the time of enrollment;
- (b) be eligible for MassHealth Standard as defined in 130 CMR 450.105(A): *MassHealth Standard* or MassHealth CommonHealth as defined in 130 CMR 450.105(E): *MassHealth CommonHealth*;
- (c) be enrolled in Medicare Parts A and B, be eligible for Medicare Part D, and have no other health insurance that meets the basic-benefit level as defined in 130 CMR 501.001: *Definition of Terms*; and
- (d) live in a designated service area of an ICO.

(130 CMR 508.007).

The ICO will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, the ICO is required to provide evidence of its coverage, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to specialty, behavioral-health, and long-term services and supports. (130 CMR 508.007(C)). ICO members may appeal a determination made by an ICO to the Board of Hearings pursuant to 130 CMR 508.010.

CCA's One Care Plan is a MassHealth ICO and amongst the services the ICO provides are Homemaker and Personal Care services. Homemaker services (HM) consist of assistance with instrumental activities of daily living (IADLs) such as meal preparation, light housework, grocery shopping and laundry but do not include heavy chore type services, physical assistance (with either cueing or ADLs), or medication reminders. (ICO DST 011 at Ex. 5, p. 36). Personal Care (PC) refers to hands-on assistance (actually physically performing a task for the member) or cueing to prompt the member to perform a task and are provided by Personal Care Workers who have received 60 hours of training. (ICO DST 016 at Ex. 5, p. 40). Services may include assistance in bathing, dressing, personal hygiene, other activities of daily living, reminders with medications, health-related tasks, and medical escort. (Id.).

According to the ICO's HM Decision Support Tool, in order to be clinically eligible, the member must have a physical, cognitive, or behavioral related disability that impairs the member's ability to perform at least 2 of the following IADLs: meal preparation, light housework, grocery shipping, and

laundry. (DST 011 at Ex. 5, p. 36). The ICO has also implemented the following limitations or exclusions:

- HM is provided only when neither the member nor anyone else in the household<sup>4</sup> is capable of performing essential household tasks.
- If the member lives with **a relative or other caregiver**, it is expected that when routine housekeeping, laundry, shopping, and meal preparation is performed, the IADL needs of the member will be included.
- If a Landlord, community/volunteer agency, or other party is capable of, or responsible for, homemaking tasks.
- HM may not be provided to the benefit of non-disabled household members; for example, cleaning common areas or laundry for other persons living in the home.
- HM is not provided if the member is a resident or inpatient in a hospital, nursing facility or intermediate care facility for developmentally disabled or any other medical facility.
- HM may not be provided if the member resides in a provider operated dwelling, such as a group home or assisted living residence, or if the member receives another service that includes IADL assistance: Adult Foster Care, Group Adult Foster Care, other agency personal assistance services (if the authorized hours include time for IADL tasks), or Personal Care Attendant (emphasis added). (DST 011 at Ex. 5, p. 37).

The PC Decision Support tool states that to be clinically eligible for PC, the member must have a physical, cognitive, or behavioral-related disability that prevents the member from completing at least one of the following ADLs without assistance (cueing, prompting, or hands-on): mobility, transfers, bathing/grooming, dressing/undressing, eating/feeding, toileting, or taking medication. (DST 016 at Ex. 5, p. 40). Authorizations must not exceed the standards of the ICO's time for task guidelines. (*Id.* At Ex., p. 41). The member's care team must ensure that PC is not duplicative. The ICO will not pay for services that duplicate services provided by another payment source or legally responsible individual.

There did not seem to be a question that the appellant is clinically eligible for both HM and PC. The denial of the HM and the modification of the time requested for PC, however, are based on an assumption concerning the nature of appellant's relationship with her roommate. The ICO has determined that this individual is the appellant's "spouse." The appellant describes this individual as her girlfriend. Other material submitted into the record describe her as either the appellant's partner or girlfriend. Under Massachusetts law, a spouse has been defined as one of two individuals who have entered into a "voluntary union...to the exclusion of all others." (*Goodridge v. Department of Public Health*, 440 Mass. 309, 343 (2004)). There is no evidence in the record that the appellant and her girlfriend have entered a voluntary union to the exclusion of all others. The appellant's girlfriend is not her spouse.

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<sup>4</sup> Because the ICO did not deny the HM services under this justification, the term "household" appears to be used here in the sense meant by MassHealth regulations concerning household composition, located at 130 CMR 506.002(B) and (C), rather than in its plain meaning.

Because the appellant's girlfriend is not her spouse, the ICO's determinations concerning both HM and PC are both affected in slightly different ways. If the member lives with a relative or other caregiver, it is expected that when routine housekeeping, laundry, shopping, and meal preparation is performed, the IADL needs of the member will be included and the ICO will not approve a request for HM. Similarly, the ICO will not pay for services such as PC that duplicate services provided by another payment source or legally responsible individual. The ICO defines relative or other caregiver by reference to the definition of "Legally Responsible Individual" located at 130 CMR 630.402. A Legally Responsible Individual is "any person who has a duty under state law to care for another person and includes a legal guardian or a spouse of a participant." (130 CMR 630.402). Because the ICO concluded the appellant's girlfriend was her spouse, they were able to deny HM in its entirety and reduce the time requested for PC. The appellant's girlfriend, however, does not have a duty under state law to care for the appellant. She is not a legally responsible individual. For that reason, it was incorrect to deny the HM in its entirety or to conclude that certain of the time requested for PC was duplicative, at least based on the theory that the appellant's girlfriend has a legal duty to care for the appellant.

For the above stated reasons, the appeal is APPROVED.

## **Order for the ICO**

Approve the appellant's request for Homemaker services and restoring the time requested for Personal Care services.

## **Implementation of this Decision**

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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

Commonwealth Care Alliance SCO, Attn: Cassandra Horne, 30 Winter Street, Boston, MA 02108