

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Denied in part	Appeal Number:	2179641
Decision Date:	3/01/2022	Hearing Date:	02/04/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for Respondent:
Cassandra Horne, Appeals Manager –
Commonwealth Care Alliance

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

Appeal Decision:	Dismissed in part; Approved in part; Denied in part	Issue:	Managed Care - PCA
Decision Date:	3/01/2022	Hearing Date:	02/04/2022
CCA's Rep.:	Cassandra Horne	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	Yes

Authority

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

Jurisdiction

Through a Denial of Level 1 Appeal dated December 14, 2021, Commonwealth Care Alliance ("CCA") denied the appellant's internal appeal regarding personal care attendant services because it determined the requested level of services were not medically necessary. Exhibit 2. The appellant filed this timely appeal on December 23, 2021. Exhibit 2; 130 CMR 610.015(B). A managed care contractor's decision to deny or provide limited authorization of a requested service is grounds for appeal 130 CMR 610.032(B).

Despite appealing within 10 days of the date of the Level 1 Appeal Denial, CCA did not provide the appellant with "Aid Pending" protection pursuant to 130 CMR 610.036. This matter was addressed at the hearing, and CCA agreed to retroactively restore 32.75 of day/evening PCA hours and 14 hours of nighttime assistance per week through the conclusion of this appeal process.

Action Taken by Commonwealth Care Alliance

CCA reduced the number of personal care attendant hours it authorized for the appellant from 32.75 day/evening hours and 14 nighttime hours per week down to 21.25 day/evening hours and zero nighttime hours per week.

Issue

The appeal issue is whether CCA was correct, pursuant to 130 CMR 422.000 and 450.204, in

determining that the appellant required fewer hours of personal care attendant assistance that she had been receiving.

Summary of Evidence

The appellant is an elderly man with type 2 diabetes, hyperlipidemia, moderate recurrent major depressive disorder, degenerative joint disease, history of syncope, amongst other diagnoses. He has been enrolled in the respondent's senior care organization ("SCO"), a managed care organization that coordinates Medicaid and Medicare benefits for enrollees. On or around September 2, 2021, CCA reevaluated the appellant for personal care attendant ("PCA") services. This evaluation involved a nurse visiting the appellant and observing him perform various tasks around his home. Following this reevaluation, CCA reduced time in eleven categories of assistance from what had been allowed following a 2020 evaluation. The eleven areas reduced were: mobility, bathing, dressing, undressing, bladder care, bowel care, assistance with medications, meal preparation, housekeeping, paperwork assistance, and transportation to doctor's appointments. This evaluation authorized 21.25 hours of day/evening assistance and zero nighttime hours.

The evaluator determined the appellant to be independent with mobility and transfers and noted that the appellant had reported he could dress and undress without assistance and wash his own upper body. Based in part upon this information, the assessor decided the appellant required less assistance with mobility, dressing/undressing, and bathing activities. They also requested identified as excessive the time the appellant received for housekeeping and assistance getting to doctor's appointments and reported that the appellant only ate breakfast three times per week. CCA issued its decision on or around September 28, 2021, stating that the changes would go into effect as of December 1, 2021. The appellant filed an internal appeal on or around November 16, 2021.

The appellant wanted his hours to remain the same as had been authorized following an evaluation from November 2020, at which time he was approved for 32.75 day/evening hours and 14 nighttime hours. CCA's representative noted that review had documented a recent fall and back injury that had necessitated a greater amount of assistance. The new review documented an improvement in the appellant's condition since that time, thus the reduction in hours. Because bladder and bowel care were reduced, CCA had also cancelled the appellant's nighttime assistance, as they deemed him independent with getting up and using the bathroom on his own during the night.

At the end of the hearing, CCA had restored the time allowed in 2020 for bladder care (20 minutes per day), bowel care (five minutes per day), assistance with medications (10 minutes per day), meal preparation (90 minutes per day), and assistance with paperwork (30 minutes per week). The appellant accepted that he did not require as much time dressing and undressing. He testified that it takes him a long time to get dressed and undressed, but that he only needs assistance with his lower body. He accepted the time of 10 minutes per day for dressing and seven minutes per day for undressing. He also accepted the reduced time for housekeeping because he lives in a studio apartment, and the reduced time for doctor's appointments.

At the end of the hearing, only two categories that were adjusted remained in dispute: mobility and bathing. The new authorization requested no time for mobility while the old request had allowed

five minutes, four times per day to help the appellant stand up from a seated position. The new request reported that the appellant was seen independently standing up from a seated position and ambulating about his apartment. CCA's representative noted that the old request documented that the appellant was demonstrating poor mobility due to a recent fall and fractured ribs. She testified that it sounded as though the appellant had healed from that state somewhat. The appellant agreed that he could get out of a seat, but he testified that he needed to use a walker or a cane to walk about. The appellant testified that he is unstable and that he is at risk for falling. He testified that the PCA sometimes helps him stand up if they are there, but that he really needs the PCA for other forms assistance.

Regarding bathing, the old request documented the appellant had "poor balance, poor ROM/mobility, chronic pain and history of falls [and] he requires PCA assist with showering and shower transfers. Member reported that he is able to wash his front and privates but his PCA washes his hair, back and lower extremities as he has chronic abdominal pain." The new request documented that the evaluating nurse "observed member transfer with minimal physical assist in/out of tub using grab bars for support. Member reports he can wash his upper body without assist and needs hands on assist with washing his back, feet, and hair. Member reports his hair is washed daily." The old request described his need for assistances as "maximum assistance" and allowed 45 minutes per day, while the new request described it as "minimal assistance" and allowed 15 minutes per day.

The appellant testified that the nurse never saw him get into the shower when she visited, and that he needs help getting into and out of the shower. The appellant could not give a clear description of his shower routine, but he confirmed that his PCA assists him with washing his back and with drying off. She helps him put his pants on, but otherwise he can dress himself. He testified that the whole shower process takes about 30 minutes.

Findings of Fact

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

1. In November 2020, the appellant was evaluated by CCA for PCA services. He was authorized for 32.75 day/evening hours and 14 nighttime hours, based in part upon a recent fall and injury that was limiting his mobility. Exhibit 3, pp. 71-79.
2. On or around September 2, 2021, CCA reevaluated the appellant for PCA services. CCA reduced time in eleven categories of assistance from what had been allowed following a 2020 evaluation. The eleven areas reduced were: mobility, bathing, dressing, undressing, bladder care, bowel care, assistance with medications, meal preparation, housekeeping, paperwork assistance, and transportation to doctor's appointments. CCA authorized only 21.25 day/evening hours and zero nighttime hours. Testimony by CCA's representative; Exhibit 3, pp. 61-69.
3. On or around September 28, 2021, CCA sent a notice informing the appellant of this reduction in services, effective December 1, 2021. Exhibit 3, pp. 35-42.

4. The appellant filed an internal appeal on or around November 16, 2021. Testimony by CCA's representative.
5. On December 14, 2021, CCA denied the appellant's internal appeal regarding personal care attendant services because it determined the requested level of services were not medically necessary. The appellant filed this timely appeal on December 23, 2021. Exhibit 2.
6. CCA restored the time allowed in 2020 for bladder care, bowel care, assistance with medications, meal preparation, and assistance with paperwork. CCA also restored all 14 nighttime hours. The appellant accepted 10 minutes per day for dressing and seven minutes per day for undressing. He also accepted 60 minutes per week for housekeeping and 60 minutes per week for doctor's appointments. Testimony by CCA's representative and the appellant.
7. The two remaining issues in dispute were time for mobility and bathing.
 - a. Mobility:
 - i. The appellant was authorized for 20 minutes per day for assistance with standing up from a seated position based upon the appellant's poor mobility due to a recent fall and fractured ribs. Exhibit 3, p. 71.
 - ii. The new authorization did not allow any time for transferring because the appellant was observed standing from a seated position on his own and moving about his apartment. Exhibit 3, p. 61.
 - iii. The appellant can stand up from a seated position and move about his apartment using his walker. Testimony by the appellant.
 - b. Bathing:
 - i. The old request documented the appellant had "poor balance, poor ROM/mobility, chronic pain and history of falls [and] he requires PCA assist with showering and shower transfers. Member reported that he is able to wash his front and privates but his PCA washes his hair, back and lower extremities as he has chronic abdominal pain." Exhibit 3, p. 72.
 - ii. For the new request, the appellant was observed transferring "with minimal physical assist in/out of tub using grab bars for support. Member reports he can wash his upper body without assist and needs hands on assist with washing his back, feet, and hair. Member reports his hair is washed daily." Exhibit 4, p. 62.
 - iii. The appellant testified the entire showering process takes about 30 minutes. Testimony by the appellant.

Analysis and Conclusions of Law

A “senior care organization” or “SCO” is a comprehensive network of medical, health care and social service providers that integrates all components of care, either directly or through subcontracts. SCOs will be responsible for providing enrollees with the full continuum of Medicare and MassHealth covered services. MGL Ch. 18E, § 9D(a). A MassHealth member must elect to enroll in an SCO, and once they do so, the SCO delivers the member’s primary care and is in charge of authorizing, arranging, integrating, and coordinating the provision of all covered services for the member. 130 CMR 508.003. Whenever an SCO makes a coverage decision, it must provide notice to the affected member. 130 CMR 508.011. An SCO has 30 days to resolve any internal appeals, and the member then has 120 days to request a fair hearing from the Board of Hearings. See 130 CMR 508.012; 130 CMR 610.015(B)(7).

MassHealth is required to cover all services and treatments that are “medically necessary”:

(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, or 517.007.

130 CMR 450.204(A).

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home.

ADLs include:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;

- (3) bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

130 CMR 422.410(A).

IADLs include:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving personal care services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

130 CMR 422.410(B) (emphasis added).

As a preliminary matter, there is no dispute regarding bladder care, bowel care, assistance with medications, meal preparation, assistance with paperwork, nighttime hours, dressing, undressing, housekeeping, and transportation time to doctor's appointments. The parties resolved these issues between themselves, and this appeal is DISMISSED in part with regards to these issues.¹ See 130 CMR 610.051(B).

The remaining disputes between the parties involve mobility and bathing. Regarding mobility, this appeal is DENIED in part. The appellant acknowledged he is able to get up and move about his apartment without his PCA's assistance. The fact that he requires the use of a walker or a cane, does not necessitate PCA hours to be allowed to provide assistance with this activity.

Regarding bathing, the appeal is APPROVED in part and DENIED in part. CCA allowed the minimum amount of time possible for assistance with showering according to the Time-for-Task tool in time for bathing, 15 minutes. See Exhibit 3, p. 46. However, the appellant requires assistance with the same activities. The new evaluation documented that the appellant required assistance transferring into the tub, albeit with "minimal physical assist," but otherwise the appellant was

¹ Based upon these agreed adjustments, the appellant should be authorized for 25 day/evening PCA hours and 14 nighttime hours.

documented as requiring the same assistance with “washing his back, feet, and hair.” The appellant’s testimony was that his entire showering process takes about 30 minutes. As the only part of the shower the appellant performs unassisted is washing his front, this appeal allows 25 minutes per day for showering.

As a result, the appellant is entitled to the following time weekly: mobility, zero minutes; bathing and hair washing, 175 minutes; general grooming, 70 minutes; dressing, 70 minutes; undressing 49 minutes; toileting, 175 minutes; medication management, 70 minutes; meal preparation and cleanup, 630 minutes; laundry, 90 minutes; housekeeping, 60 minutes; grocery shopping, 90 minutes; paperwork assistance 30 minutes; and transportation 60 minutes. This totals 1,569 minutes per week, or 26.15 hours. This time will be rounded up to the closest quarter-hour for a total of 26 hours and 15 minutes of day/evening assistance. The appellant is also authorized for 14 nighttime hours per week.

Order for SCO

Allow 26 hours and 15 minutes of day/evening PCA assistance and 14 nighttime hours for the appellant from two week after the date of this decision until the appellant’s next evaluation for PCA services. The appellant’s services should have been in Aid Pending during this appeal, and his PCA may submit for any time worked prior to two weeks following this decision that is less than 32.75 day/evening hours and 14 nighttime hours per week.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your care management team at CC. 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Commonwealth Care Alliance SCO, Attn: Cassandra Horne, 30

Winter Street, Boston, MA 02108