

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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

**Appeal Number:** 2200479

**Decision Date:** 4/12/2022

**Hearing Date:** 03/04/2022

**Hearing Officer:** Scott Bernard

Appearance for Appellant:



Appearance for Senior Care Organization  
(SCO):

Cassandra Horne (Appeals and Grievance  
Coordinator);

Christine Henderson, RN (Clinical Appeals  
Nurse);

Jeremiah Mancuso, RN (Observing)

*Via telephone*



*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 in part; Denied in part	<b>Issue:</b>	SCO Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	4/12/2022	<b>Hearing Date:</b>	03/04/2022
<b>SCO's Rep.:</b>	Cassandra Horne; Christine Henderson, RN; Jeremiah Mancuso, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South Tower		

## 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 December 29, 2021, Commonwealth Care Alliance (the SCO) denied the appellant's Level 1 appeal of the reduction in her PCA hours. (See 130 CMR 508.008; 422.000 *et seq.* and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on January 18, 2022. (See 130 CMR 610.015(B) and Ex. 2). An SCO's reduction of hours of PCA services is valid grounds for appeal. (See 130 CMR 610.032).

## Action Taken by SCO

The SCO reduced the appellant's PCA services.

## Issue

The appeal issue is whether the SCO was correct, pursuant to 130 CMR 422.000 *et seq.*, in determining that the appellant's PCA services should be reduced.

## Summary of Evidence

The SCO Appeals and Grievances Coordinator (the SCO representative) spoke first and testified to the following. The appellant has been a member of the SCO since May 1, 2015. The SCO cover PCA services under its care plan. (Ex. 4). The appellant, through her provider, submitted a PCA request for 32 hours of day and 14 hours of night services per week for a total of 47 hours per week. In a notice dated November 26, 2021, the SCO authorized 25 hours of day and 14 hours of night services per week which was to become effective January 1, 2022. (Ex. 4, pp. 42-48). The appellant appealed this initial determination, however, and was able to keep her PCA hours pending this appeal through January 12, 2022. In a notice dated December 29, 2021, the SCO upheld the initial determination concerning the appellant's PCA hours, which were to become effective beginning January 13, 2022. (Ex. 1; Ex. 4, pp. 306-311). The appellant did not qualify for continued aid pending the present appeal because she did not submit the appeal within 10 days or before January 12, 2022. The appellant filed the appeal on January 18, 2022, which was after PCA services were reduced. The SCO initially denied the PCA services in a notice dated November 26, 2021. The appellant appealed this determination on November 30, 2021. This internal appeal was reviewed by the SCO's medical director, who on December 28, 2021 notified the appellant that her appeal was denied. Subsequent to the appellant's present appeal (but prior to the hearing), the SCO reviewed each of the ADLs that had been reduced. This included the time requested for mobility and transfers. The appellant was originally receiving 7 hours per week for this ADL *per* the appellant's last PCA evaluation on November 14, 2019. (Ex. 4, p. 68). This was reduced to 2.1 hours per week under the present reevaluation. (Ex. 4, p. 70). After reconsideration, however, the SCO has decided to restore the original hours. This will increase the appellant's total to 30 hours of day and 14 hours of night PCA services per week.

The SCO's Clinical Appeals Nurse (the SCO nurse) testified next and stated the following. The appellant is over the age of 65 with diagnoses of essential hypertension; urge incontinence; cough; other chronic pain; morbid obesity; slow transit constipation; a-fib; normocytic anemia; spinal stenosis; depression, major, in remission; falls; osteoarthritis of both knees; restrictive lung disease; dystrophic nail; missing teeth acquired; nephrostomy status; decreased mobility and endurance; severe episode of recurrent major depressive disorder without psychotic features; leukocytosis, unspecified type; staghorn renal calculus; renal failure, unspecified chronicity; diastolic congestive heart failure, unspecified HF chronicity; body mass index (BMI) of 33.0-33.9 adult; and hemangioma of spleen. (Ex. 4, pp. 7-8). The appellant has received the COVID-19 vaccination. (Ex. 4, p. 8).

The SCO nurse testified she and another clinical appeals nurse reviewed the appellant's reevaluation prior to the hearing. The SCO nurse stated they looked at it from a different lens with ADL and IADL changes. The appellant was originally receiving 32 day and evening hours PCA services per week (the 14-night hours per week was not reduced). The SCO nurse looked at the 7 hours per week of change. The SCO nurse discussed mobility first. Based on the appellant's diagnoses and history of falls, the SCO decided that the appellant should receive 5 more hours per week for transfers and mobility to bring the appellant's total day and evening PCA hours to 30 per week.

The SCO nurse detailed other modifications to the appellant's PA request. The SCO decreased the time requested for transportation. Originally, the provider requested 2 hours per week. When the SCO looked at the MassHealth time for task guidelines for determining transportation, it learned

the allowance is limited to 60 minutes for all members. The SCO nurse stated that during the COVID crisis, the appellant had been attending medical appointments *via* telehealth.

The SCO nurse stated that she reviewed the time for laundry using the time for task tool and determined they could not increase this time. The SCO nurse stated that the most time that the SCO could allow was 90 minutes per week. The SCO will only give one hour for laundry if it is done in the home therefore the SCO reduced the time to 60 minutes per week. Upon questioning, the appellant stated she did have incontinence and the appellant's PCA stated the appellant soiled the bed often. The PCA stated that she was doing at least seven loads of laundry per week because of the appellant's incontinence. The PCA stated that the laundry was in the basement of the building in which the appellant lived, and the appellant lived on the top floor. The basement was not wheelchair accessible. The appellant's representative stated that in his experience that each load of laundry was 10 steps that each step took longer than a minute. The appellant's representative argued that 70 steps could not be performed in 60 minutes. The appellant's representative stated each step took at least a minute, if not more than a minute, perhaps a minute and a half. The SCO nurse responded that 90 seconds per step, assuming that there were 10 steps per load, would equate to 105 minutes per week (based on seven loads of laundry per week). The SCO nurse stated that under MassHealth rules, the time it took to do laundry only included the active steps. The SCO nurse offered to increase the time to 90 minutes per week to cover the hands-on active tasks involved with entire laundry activity. This would mean a total of 30.5 hours per week of day and evening services.

The SCO nurse stated the SCO would restore all the time effective from January 13, 2022, the date the appellant lost her aid pending. The appellant did not accept the time taken away from medical transportation and stated that she would like all the time the SCO reduced to be restored.

## Findings of Fact

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

1. The appellant has been a member of the SCO since May 1, 2015. (Testimony of the SCO representative).
2. The SCO cover PCA services under its care plan. (Ex. 4).
3. The appellant is over the age of 65 with diagnoses of essential hypertension; urge incontinence; cough; other chronic pain; morbid obesity; slow transit constipation; a-fib; normocytic anemia; spinal stenosis; depression, major, in remission; falls; osteoarthritis of both knees; restrictive lung disease; dystrophic nail; missing teeth acquired; nephrostomy status; decreased mobility and endurance; severe episode of recurrent major depressive disorder without psychotic features; leukocytosis, unspecified type; staghorn renal calculus; renal failure, unspecified chronicity; diastolic congestive heart failure, unspecified HF chronicity; body mass index (BMI) of 33.0-33.9 adult; and hemangioma of spleen. (Ex. 4, pp. 7-8; Testimony of the SCO nurse).
4. The appellant has received the COVID-19 vaccination. (Ex. 4, p. 8; Testimony of the SCO nurse).

5. The appellant, through her provider, submitted a reevaluation PA request for PCA services. (Testimony of the SCO representative; Ex. 4).
6. The appellant requested 32 hours of day and 14 hours of night services per week, a total of 47 hours. (Testimony of the SCO representative; Ex. 4).
7. In a notice dated November 26, 2021, the SCO reduced the appellant's PCA services to 25 hours of day and 14 hours of night services per week, a total of 39 hours per week, which was to become effective January 1, 2022. (Ex. 4, pp. 42-48).
8. The appellant appealed this initial determination in a timely fashion on November 30, 2021, however, and was able to keep her PCA hours pending this appeal through January 12, 2022. (Testimony of the SCO representative).
9. In a notice dated December 29, 2021, the SCO upheld the initial determination concerning the appellant's PCA hours, which were to become effective beginning January 13, 2022. (Ex. 1; Ex. 4, pp. 306-311).
10. The appellant filed the appeal on January 18, 2022. (Ex. 2).
11. The appellant did not qualify for aid pending the present appeal because she did not submit the appeal within 10 days of the date on the notice or before January 13, 2022. (Testimony of the SCO representative).
12. Subsequent to the appeal but prior to the hearing, the SCO nurse and one other nurse reviewed the appellant's record and determined that time should be restored. (Testimony of the SCO representative; Testimony of the SCO nurse).
13. Based on the appellant's diagnoses and history of falls, the SCO decided that the appellant should receive 5 more hours per week for transfers and mobility to bring the appellant's total day and evening PCA hours to 30 per week. (Testimony of the SCO nurse).
14. After considering the appellant, the appellant's representative, and the PCA's testimony, the SCO offered to increase the time allotted for laundry from 60 to 90 minutes. (Testimony of the SCO nurse; Testimony of the appellant; Testimony of the appellant's representative; Testimony of PCA).
15. The SCO offered that any changes in the appellant's favor become effective January 13, 2022. (Testimony of the SCO nurse; Testimony of the SCO representative).
16. The SCO had reduced the time requested for transportation from two hours per week to one hour per week based on MassHealth guidelines. (Testimony of the SCO nurse).

## **Analysis and Conclusions of Law**

MassHealth members who are 65 years of age or older may enroll in a Senior Care Organization (SCO) pursuant to 130 CMR 508.008(A). (130 CMR 508.001(C)). When a member chooses to enroll in a SCO

in accordance with the requirements under 130 CMR 508.008, the SCO will deliver the member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. (130 CMR 508.008(C)). The appellant is enrolled in a SCO pursuant to 130 CMR 508.008. The SCO covers PCA services in its plan under the MassHealth benefit. (Ex. 4). Therefore, the SCO uses the regulations for the Personal Care Attendant Services program in order to make PCA determinations.

As stated in 130 CMR 422.403(C), the SCO covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The PCA services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs...
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

The requested services must also be medically necessary for prior authorization to be approved. (130 CMR 450.204; 130 CMR 422.416). MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service where such service is not medically necessary. (130 CMR 450.204).

(A) A service is "medically necessary" if:

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

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.).

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(See 130 CMR 450.204).

MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs. (130 CMR 422.411(A)). ADLs include such activities such as physically assisting a member with basic care like bathing, personal hygiene, and grooming skills, as well as assisting a member to dress or undress. (130 CMR 422.410(A)(3),(4)). IADLs comprise such activities as household services, including shopping, meal preparation and clean up, transportation, and special services, such as the care and maintenance of wheelchairs and adaptive devices. (130 CMR 422.410(B)).

The record supports the restoration of time the SCO offered at the hearing. In both its initial and Level 1 determination, the SCO reduced the time the appellant requested in total from 32 hours of day services to 25 hours of day services per week (the appellant received 14 hours of night services, as requested). The SCO mostly reduced the times for mobility and transfers, as well as laundry and medical transportation. Before the hearing, the SCO decided that given the appellant's history of falls, the cuts to the times for mobility and transfers was drastic and decided to restore this time. Additionally, as a result the testimony of the appellant, the appellant's representative, and the appellant's PCA at the hearing, the SCO offered to increase the time allotted for laundry from 60 minutes to 90 minutes. These restorations appear to be supported by medical necessity and increase the appellant's hours of day PCA services from 25 to 30.5 hours per week.

Regarding mobility and transfers, the appeal is APPROVED IN PART.

The appellant did not present substantial or credible evidence supporting an increase in medical transportation, however. For that reason, with regard to medical transportation, the appeal is DENIED IN PART.

## **Order for SCO**

The time allotted for mobility and transfers during the day should be increased to five hours *per* week and the time allotted for laundry during the day should be increased to 90 minutes *per* week. Total time for PCA services will be 30.5 hours of day services and 14 hours of night services per week from January 13, 2022 until the end of the PA period.

## **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 MassHealth Enrollment Center. 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

