

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



|                         |               |                       |            |
|-------------------------|---------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Approved      | <b>Appeal Number:</b> | 2201630    |
| <b>Decision Date:</b>   | 7/7/2022      | <b>Hearing Date:</b>  | 05/02/2022 |
| <b>Hearing Officer:</b> | Paul C. Moore | <b>Record Closed:</b> | 06/17/2022 |

**Appearances for Appellant:**

Pro se, with [REDACTED] (niece, PCA) (both by telephone)

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

Cassandra Horne, Appeals and Grievances Manager; Jeremiah Mancuso, R.N., Clinical Appeals Nurse; Michelle Shepherd, SCO PCA Supervisor (all from Commonwealth Care Alliance, and all by 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   | <b>Issue:</b>           | SCO; PCA Services                                |
| <b>Decision Date:</b>    | 7/7/2022   | <b>Hearing Date:</b>    | 05/02/2022                                       |
| <b>SCO Reps.:</b>        | Cassandra Horne<br>Jeremiah Mancuso<br>Michelle Shepherd | <b>Appellant Reps.:</b> | Pro se, with [REDACTED]<br>[REDACTED], niece/PCA |
| <b>Hearing Location:</b> | Remote   | <b>Aid Pending:</b>     | 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 notice dated March 2, 2022, Commonwealth Care Alliance (CCA), a MassHealth Senior Care Organization (SCO) and MassHealth's agent, denied the appellant's level one appeal of a modification of a prior authorization (PA) request for day/evening personal care attendant (PCA) services, from the requested 23.75 day/evening hours and 14 night hours of PCA assistance, per week, to 23.75 day/evening hours and 0 night hours of PCA assistance, per week (Exhibit 1).<sup>1</sup> The appellant filed this external appeal with the Board of Hearings (BOH) in a timely manner on March 3, 2022 (130 CMR 610.015; Exhibit 2). Denial of a level one internal appeal by a managed care organization is a valid ground for appeal to the BOH (130 CMR 610.032(B)).

## Action Taken by CCA

CCA denied the appellant's level one internal appeal of a modification of a request for PCA services.

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<sup>1</sup> A Senior Care Organization is defined at 130 CMR 501.001 as "an organization that participates in MassHealth under a contract with the MassHealth agency and the Centers for Medicare & Medicaid Services to provide a comprehensive network of medical, health-care, and social-service providers that integrates all components of care, either directly or through subcontracts. SCOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services."

## Issue

Did CCA correctly deny the appellant's level one internal appeal of a modification of a PA request for PCA services?

## Summary of Evidence

The appellant appeared telephonically at the hearing, and testified with the assistance of her niece, who is also her PCA. CCA was represented by its manager of appeals and grievances, a clinical appeals nurse, and a SCO PCA supervisor, all of whom appeared via Microsoft Teams.

The CCA appeals and grievances manager testified that the appellant, who is age [REDACTED], lives alone in the community. She has been enrolled in the CCA SCO program since November 1, 2021. On January 13, 2022, in response to a PA request for PCA services submitted on the appellant's behalf by Stavros, a Personal Care Management (PCM) agency, CCA assigned a Registered Nurse and occupational therapist to conduct a virtual evaluation of the appellant to assess her need for PCA services (Exh. 4).

The PA request for PCA assistance was for 23.75 hours of day/evening PCA services per week, and 14 hours of nighttime PCA hours per week. The relevant dates of service are February 1, 2022 through January 31, 2023 (Testimony).

The appellant's medical diagnoses include chronic obstructive pulmonary disease (COPD), morbid obesity, hypertension, hyperlipidemia, bladder incontinence, cervical paraspinal muscle spasms, right knee pain, right shoulder pain, a past cerebellar infarction, and insulin-dependent type 2 diabetes (Testimony, Exh. 4, pp. 5-6). She is dependent on supplemental oxygen (*Id.*). She uses a walker and/or cane to ambulate (Testimony).

Following the evaluation by CCA on January 13, 2022, CCA determined that the appellant no longer needs nighttime PCA hours. This decision was made in view of the appellant having been observed via video as independent with toileting, managing her bladder incontinence with pull-ups, being able to change her pull-ups independently, and managing her hygiene, wiping and clothing independently. CCA's SCO PCA supervisor testified that the appellant reported to the CCA evaluators on January 13, 2022 that she does not have a nighttime PCA (Testimony, Exh. 4).

On January 25, 2022, CCA sent a written notice to the appellant apprising her that effective March 1, 2022, her day/evening PCA hours would remain unchanged at 23.75 hours per week, but her nighttime PCA hours would be eliminated. According to the CCA appeals and grievances manager, the appellant's niece, who is her PCA, requested a level one internal appeal at CCA on the appellant's behalf on February 1, 2022 (Testimony).

Following that appeal request, the original decision and request for an appeal were reviewed by a CCA medical director, and the appellant's level one appeal was denied by written notice to the appellant dated March 2, 2022 (Exh. 1).

It is the latter notice that the appellant timely appealed externally to the BOH (Exh. 2).<sup>2</sup>

The appellant testified that she had a nighttime PCA, but the appellant was very nervous having a stranger in her home at first. The appellant stated that she misinformed the CCA evaluators on January 13, 2022 that she does not have a nighttime PCA; in fact, she does. The appellant's PCA, who is also the appellant's niece, testified by telephone that she has worked with the appellant for ten years, and that she assists the appellant at night with urinary and bowel incontinence, from 4 am to 6 am, by changing her pull-ups, changing her bedding, and assisting her onto a shower chair. The appellant's shower is outside her apartment door, around the corner. The appellant's PCA then returns at 9 am, and assists the appellant again until approximately 12 noon or 1 pm each day (Testimony).

In response to this testimony, CCA's SCO PCA manager stated that after the date of the January 13, 2022 assessment, a CCA nurse completed a Minimum Data Set – Home Care (MDS-HC) for the appellant by video on April 7, 2022, which notes the following:

Per [the appellant] for toileting, she gets on and off the toilet with assistive device, and PCA assists her with taking of (*sic*) she depends on and managing hygiene care during the day. Per [the appellant] for overnight toileting, she completes activity with use of assistive devices and some difficulty. . . . [The appellant] functions independently with difficulty during the overnight hours.

(Exh. 7)<sup>3</sup>

The appellant stated that CCA evaluators, who were virtually present during the day, only saw her ambulate from her bedroom to the kitchen, and that they not see her using the toilet, nor did they observe her at night (Testimony).

A written CCA SCO evaluation for PCA services, completed and signed by a CCA registered nurse on January 13, 2022, states the following with respect to the appellant's bladder care:

The [appellant] report (*sic*) a lot of bladder incontinence and using pull-ups, the [appellant] observed able to access/transfer toilet and report managing bladder hygiene change pull-ups/wipe and fix clothes slowly/independent. The [appellant] report (*sic*) when PCA is around she assist (*sic*) too however able [to] manage – minimal time given if PCA assist [appellant].

(Exh. 4, p. 82)<sup>4</sup>

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<sup>2</sup> During the pendency of this appeal, the appellant has continued to receive “aid pending” at the level of 23.75 day/evening PCA hours per week, and 14 nighttime hours per week.

<sup>3</sup> This recent MDS-HC was sent via e-mail to the hearing officer following the hearing, during a record open period, on June 9, 2022.

<sup>4</sup> With regard to showering, the written CCA SCO evaluation for PCA services states: “The [appellant] reports only able to participate minimally with bathing (wash face, chest, private area. . . .)” (Exh. 4, p. 81).

The appellant testified that her PCA draws up her insulin for her at night, and pre-fills insulin syringes for the appellant to self-inject during the day. The appellant's PCA also pre-fills a medication box with the appellant's ordered medications every week (Testimony).

The appellant's niece stated that she has worked for the appellant from 4 am to 6 am for many years, and that her timesheets, if requested and reviewed, would corroborate this fact. She believes the CCA evaluators misunderstood the appellant and erroneously concluded that the appellant's PCA is present from 4 pm to 6 pm daily (Testimony).

In response to this testimony, the CCA appeals and grievances manager offered to obtain the signed timesheets reflecting the appellant's PCA hours worked from February 1, 2022 to present. At the close of the hearing, the hearing officer agreed to keep the record of this appeal open until May 31, 2022 for the CCA representatives to produce copies of the PCA timesheets ("the timesheets") from the fiscal intermediary, Tempus Unlimited, for the period February 1, 2022 to present, and an additional week, or until June 7, 2022, for the appellant to submit written comments on the timesheets, including why she believes needs nighttime PCA hours (Exh. 5).

The hearing officer heard nothing further from CCA, so by e-mail dated June 9, 2022, he inquired as to the status of the requested timesheets (Exh. 6). On June 10, 2022, the hearing officer received from CCA copies of signed timesheets reflecting that the appellant's PCA worked two hours, from 4 am to 6 am, every night for the appellant for the entire time period January 23, 2022 through May 28, 2022 (Exh. 8). The timesheets do not reflect what specific tasks the appellant's PCA performed for the appellant at night (*Id.*).

## Findings of Fact

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

1. The appellant is age [REDACTED], lives alone in the community, and is enrolled in CCA's SCO program (Testimony, Exh. 4).
2. The appellant's diagnoses include COPD, morbid obesity, hypertension, hyperlipidemia, bladder incontinence, cervical paraspinal muscle spasms, right knee pain, right shoulder pain, a past cerebellar infarction, and insulin-dependent type 2 diabetes (Testimony, Exh. 4, pp. 5-6).
3. The appellant uses a cane or walker to ambulate, and is oxygen-dependent (Testimony, Exh. 4).
4. On January 13, 2022, in response to a PA request for PCA services submitted on the appellant's behalf by Stavros, a PCM agency, CCA assigned a Registered Nurse and occupational therapist to conduct a virtual evaluation of the appellant to assess her need for PCA services (Exh. 4).

5. The PA request for PCA assistance was for 23.75 hours of day/evening services per week, and 14 hours of nighttime services per week, and the relevant dates of service are February 1, 2022 through January 31, 2023 (Testimony).
6. Following the evaluation by CCA on January 13, 2022, CCA determined that the appellant no longer needs nighttime PCA hours (Testimony, Exh. 4).
7. On January 25, 2022, CCA sent a written notice to the appellant apprising her that effective March 1, 2022, her day/evening PCA hours would remain unchanged at 23.75 hours per week, but her nighttime PCA hours would be eliminated (*Id.*).
8. The appellant's niece, who is her PCA, requested a level one internal appeal at CCA on the appellant's behalf on February 1, 2022 (Testimony).
9. Following that appeal request, the original decision and request for an appeal were reviewed by a CCA medical director, and the appellant's level one appeal was denied by written notice to the appellant dated March 2, 2022 (Exh. 1).
10. The appellant requested a timely external appeal of the level one denial with the BOH (Exh. 2).
11. During the pendency of this appeal, the appellant has continued to receive "aid pending" at the level of 23.75 day/evening PCA hours per week, and 14 nighttime hours per week (Testimony).
12. On January 13, 2022, the appellant erroneously informed the CCA evaluators that she does not have a nighttime PCA (Testimony).
13. The CCA evaluators did not observe the appellant toileting at night (Testimony, Exh. 4).
14. A written CCA SCO evaluation for PCA services, completed and signed by a CCA registered nurse on January 13, 2022, states the following with respect to the appellant's bladder care: "The [appellant] report (*sic*) a lot of bladder incontinence and using pull-ups, the [appellant] observed able to access/transfer toilet and report managing bladder hygiene change pull-ups/wipe and fix clothes slowly/independent. The [appellant] report (*sic*) when PCA is around she assist (*sic*) too however able [to] manage – minimal time given if PCA assist [appellant]" (Exh. 4, p. 82).
15. CCA completed a MDS-HC for the appellant by video on April 7, 2022, which notes the following: "Per [the appellant] for toileting, she gets on and off the toilet with assistive device, and PCA assists her with taking of (*sic*) the depends on and managing hygiene care during the day. Per [the appellant] for overnight toileting, she completes activity with use of assistive devices and some difficulty. . . . [The appellant] functions independently with difficulty during the overnight hours" (Exh. 7).

16. The appellant's PCA, who is also the appellant's niece, has worked with the appellant for ten years, and assists the appellant at night with urinary and bowel incontinence, from 4 am to 6 am, by changing her pull-ups, changing her bedding, and assisting her onto a shower chair. The appellant's shower is outside her apartment door, around the corner. The appellant's PCA then returns at 9 am, and assists the appellant again until approximately 12 noon or 1 pm each day (Testimony).
17. With regard to showering, the written CCA SCO evaluation for PCA services states: "The [appellant] reports only able to participate minimally with bathing (wash face, chest, private area. . . )" (Exh. 4, p. 81).
18. Following the hearing, during a record-open period, CCA produced copies of signed timesheets reflecting that the appellant's PCA worked two hours, from 4 am to 6 am, every night for the appellant for the entire time period January 23, 2022 through May 28, 2022 (Exh. 8).

## **Analysis and Conclusions of Law**

Pursuant to regulation 130 CMR 508.001, "MassHealth Member Participation in Managed Care:"

(A) Mandatory Enrollment with a MassHealth Managed Care Provider. MassHealth members who are younger than 65 years old must enroll in a MassHealth managed care provider available for their coverage type. Members described in 130 CMR 508.001(B) or who are excluded from participation in a MassHealth managed care provider pursuant to 130 CMR 508.002(A) are not required to enroll with a MassHealth managed care provider.

(B) Voluntary Enrollment in a MassHealth Managed Care Provider. The following MassHealth members who are younger than 65 years old may, but are not required to, enroll with a MassHealth managed care provider available for their coverage type: (1) MassHealth members who are receiving services from DCF or DYS; (2) MassHealth members who are enrolled in the Kaileigh Mulligan Program, described in 130 CMR 519.007(A): The Kaileigh Mulligan Program. Such members may choose to receive all services on a fee-for-service basis; (3) MassHealth members who are enrolled in a home- and community-based services waiver. Such members may choose to receive all services on a fee-for-service basis; or (4) MassHealth members who are receiving Title IV-E adoption assistance as described at 130 CMR 522.003: Adoption Assistance and Foster Care Maintenance. Such members may choose to receive all services on a fee-for-service basis.

**(C) Senior Care Organizations (SCO). MassHealth members who are 65 years of age or older may enroll in a SCO pursuant to 130 CMR 508.008(A).**

(D) Integrated Care Organizations (ICO). Also referred to as "One Care plans." Members enrolled in an ICO (One Care plan) are participants in the Duals Demonstration, also known as "One Care." MassHealth members who are 21 through 64 years of age at time of enrollment may enroll in an ICO pursuant to 130 CMR 508.007(A).

...

(Emphasis added)

Next, pursuant to MassHealth regulation 130 CMR 508.008(C):

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

MassHealth regulation 130 CMR 508.010, "Right to a Fair Hearing," states as follows:

Members 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;

**(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs 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 disenrollment of a member under 130 CMR 508.003(D)(1), (D)(2)(a), or (D)(2)(b), or discharge of a member from a SCO under 130 CMR 508.008(E); or

(D) the MassHealth agency's determination that the requirements for a member transfer under 130 CMR 508.003(C)(3) have not been met.

(Emphasis added)

The appellant exhausted the internal appeal process offered through her SCO, and thereafter, requested a fair hearing with BOH, to which she is entitled pursuant to the above regulations.

As MassHealth's agent, CCA is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth SCOs, above, CCA is empowered to authorize, arrange, integrate, and coordinate the provision of all covered services for the appellant.



MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (IADLs) as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A): (a) mobility including transfers; (b) medications; (c) bathing or grooming; (d) dressing or undressing; (e) range-of-motion exercises; (f) eating; and (g) toileting; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing, and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned instrumental activities of daily living.

Pursuant to 130 CMR 450.204(A), MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. A 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

Next, pursuant to 130 CMR 422.412, "Noncovered Services:"

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

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

The sole issue to be decided here is the medical necessity of the appellant's request for two hours of nighttime PCA services every night.

CCA premised its decision to discontinue the appellant's nighttime PCA hours on the results of a virtual evaluation of the appellant, during which she was observed transferring to the toilet with an assistance device, managing her pullups, and performing hygiene and managing her clothing independently. There is no dispute that this assessment occurred via video during the day. The appellant was not observed at night.

A MDS-HC assessment of the appellant, conducted in April, 2022, reflects that for overnight toileting, she completes this activity with the use of assistive devices and with some difficulty, and that she functions independently, but with difficulty, during the overnight hours.

The appellant's PCA testified credibly that she has assisted the appellant at night for at least ten years, and that she addresses the appellant's urinary and bowel incontinence at night by changing her pull-ups, changing her bedding, and assisting her onto a shower chair. The appellant's shower is outside her apartment door, around the corner, and she also assists the appellant to access this shower chair.

Moreover, timesheets from January, 2022 through May, 2022 reflect that the PCA worked every night for the appellant during that time frame, from 4 am to 6 am.

The hearing officer concludes that two nighttime hours of PCA assistance are medically necessary for the appellant, in light of her incontinence and the difficulty she experiences transferring to the toilet, and to a shower chair following episodes of nighttime incontinence.

The appellant has demonstrated by a preponderance of the evidence that nighttime PCA hours are medically necessary for her.

CCA's decision to deny the appellant's request for two nighttime hours of PCA services every night for the PA period February 1, 2022 through January 31, 2023 was incorrect.

The appeal is approved.

## **Order for CCA**

Remove "aid pending." Send notice to the appellant authorizing her for 23.75 hours of day/evening PCA services per week, and 14 hours of nighttime PCA services per week, for the PA period February 1, 2022 through January 31, 2023.

Send notice of implementation only; do not include appeal rights.

## **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 Acting Director of the Board of Hearings, at the address on the first page of this decision.

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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Cassandra Horne, Appeals and Grievances Manager, Commonwealth Care Alliance, 30 Winter Street, Boston, MA 02108