

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2201845

Decision Date: 5/10/2022

Hearing Date: 04/13/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:



Appearances for SCO/CCA:

Cassandra Horne, Appeals & Grievances Sup.
Jeremiah Mancuso, Clinical Appeals RN
Dominique Moss, Mgr., PCA Clinical Team
Michelle Shepard, Sup., SCO PCA Team



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Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
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APPEAL DECISION

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Prior Authorization for PCA Services
Decision Date:	5/10/2022	Hearing Date:	04/13/2022
SCO's Reps.:	Cassandra Horne Jeremiah Mancuso Dominique Moss Michelle Shepard	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated December 30, 2021, Commonwealth Care Alliance (CCA), a senior care organization (SCO) which contracts with MassHealth, notified the appellant that it had denied her Level 1 Appeal regarding a reduction in personal care attendant (PCA) services (Exhibit 3, p. 9). The appellant filed a timely appeal with the Board of Hearings (130 CMR 610.015(B)). The modification of a request for services is a valid basis for appeal (130 CMR 610.032).

Action Taken by SCO

CCA reduced the appellant's PCA services, and then denied her Level 1 Appeal of that initial determination.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of any additional PCA services.

Summary of Evidence

Representatives from CCA appeared by telephone and offered the following factual background through testimony and documentary evidence: The appellant is a MassHealth member in her 60s who is enrolled in CCA, a SCO that contracts with MassHealth. The appellant lives with a roommate and has the following diagnoses: hypertension, pre-diabetes, hypercholesterolemia, severe major depression, paranoid schizophrenia, anxiety, insomnia, discoid lupus erythematosus, chronic renal impairment (stage 3), fibromyalgia, opiate use, central obesity, GERD, vertigo, glaucoma, urinary incontinence, osteoarthritis of the right knee, torn meniscus of the right knee, osteoporosis, tension headaches, history of squamous cell carcinoma of the skin, left Achilles tendonitis, intermittent allergic asthma, vitamin D deficiency, constipation, and hearing loss. The appellant has been receiving PCA services through CCA for approximately two years, and most recently had been receiving 23.75 hours of day/evening PCA services per week (and 0 night PCA hours per week) (Exhibit 3, p. 1). On September 14, 2021, CCA reassessed the appellant to determine her current functional abilities and her ongoing need for PCA services (Exhibit 3, pp. 169-175). On September 22, 2021, CCA notified the appellant that effective November 1, 2021, her PCA services would be reduced to 9.5 day/evening hours per week (and 0 night PCA hours per week) (Exhibit 3, pp. 25-32). The appellant's daughter filed a timely Level 1 internal appeal (Exhibit 3, p. 50). On May 22, 2021, CCA notified the appellant that her Level 1 internal appeal had been denied (Exhibit 3, pp. 258-263). The appellant then filed a timely appeal with the Board of Hearings.

The CCA representatives testified that in preparation for hearing, they re-reviewed the appellant's case and increased the authorization for PCA services to 19.5 day/evening hours per week. CCA reinstated the time that had been reduced in the areas of assistance with dressing, undressing, laundry, and shopping, and partially reinstated the time that had been reduced in the area of assistance with meal preparation. During the hearing, the parties were able to negotiate an agreement related to the time for assistance with the following additional tasks: medication assistance, bowel and bladder care, and meal preparation. With these additional adjustments, CCA increased the appellant's authorization to 21 day/evening PCA hours per week. The parties were unable to resolve the issue of PCA assistance with mobility/transfers.

The CCA representatives explained that the appellant had been authorized to receive 126 minutes per week for PCA assistance with mobility/transfers. After the most recent assessment, this time was reduced to 0 based on a determination that the appellant is independent with this task. CCA referenced the September 14, 2021 PCA assessment in Exhibit 3, pp. 169-175, which provides the following details regarding its reevaluation of the appellant's need for PCA services in this area:

PCA Activity	Status	PCA Time (in minutes)	Times a Day	Days a Week	Total Minutes per Week	Comments
Mobility - Transfers	I	0	0	0	0	Member observed to sit to stand transfer from her PLR [power lift recliner] without assist. Member observed to ambulate within the home using her cane for assist and support with a slow, stable pace and gait. Member observed to ascend and descend the stairs in the home with right rail ascending slowly and one step at a time but independently. Member was observed to fatigue easily. Member was observed to transfer in and out of bed and on and off her 2nd floor toilet independently. Member has a bed bar that she will now install. Member denied any recent falls.

The CCA representative testified that because the appellant was observed transferring and ambulating independently, there is no medical justification to authorize time for PCA assistance with this task.

The appellant's daughter appeared by telephone and spoke on the appellant's behalf. She explained that her mother has good days and bad days. On a good day, she can ambulate and transfer independently, although slowly. On bad days, she can't function much at all and sometimes stays in bed. She also sometimes gets dizzy when getting up from a seated position. She had a fall in January and was treated for bruises at urgent care. Her daughter is worried that her mother will fall again and she does not want her to be alone. The appellant has a shoulder injury from the fall and will start physical therapy soon to address this. The appellant does use her cane, but still has difficulty at times getting up from the chair or the commode.

The CCA representatives responded and stated PCA assistance is authorized when a member needs

consistent, daily help. They added that physical therapy should help address some of the daughter's concerns. For example, the appellant could learn to stand slowly, which could keep her blood pressure stable and help to avoid dizzy spells. Further, the physical therapist might recommend additional equipment, including an elevated toilet seat that could assist with toilet transfers.

Findings of Fact

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

1. The appellant is a female in her late 60s who is enrolled in a CCA SCO through MassHealth.
2. The appellant has the following diagnoses: hypertension, pre-diabetes, hypercholesterolemia, severe major depression, paranoid schizophrenia, anxiety, insomnia, discoid lupus erythematosus, chronic renal impairment (stage 3), fibromyalgia, opiate use, central obesity, GERD, vertigo, glaucoma, urinary incontinence, osteoarthritis of the right knee, torn meniscus of the right knee, osteoporosis, tension headaches, history of squamous cell carcinoma of the skin, left Achilles tendonitis, intermittent allergic asthma, vitamin D deficiency, constipation, and hearing loss.
3. The appellant lives with a roommate.
4. The appellant has been receiving PCA services for about two years, and most recently had been receiving 23.75 hours of day/evening PCA services per week (and 0 night PCA hours per week).
5. On September 14, 2021, CCA reassessed the appellant to determine her current functional abilities and her ongoing need for PCA services.
6. On September 22, 2021, CCA notified the appellant that effective November 1, 2021, her PCA services would be reduced to 9.5 day/evening hours per week (and 0 night PCA hours per week).
7. The appellant filed a timely Level 1 internal appeal.
8. On December 30, 2021, CCA notified the appellant that her Level 1 internal appeal had been denied.
9. The appellant then filed a timely appeal with the Board of Hearings.
10. Prior to and during the hearing, CCA increased the appellant's authorization to 21 day/evening PCA hours per week.
11. CCA had previously authorized 126 minutes per week for PCA assistance with

mobility/transfers.

12. After the most recent assessment, CCA reduced the time authorized for assistance with mobility/transfers to 0.
13. At the recent assessment, the appellant was observed independently transferring from sit to stand out of a chair, out of bed, and on and off the toilet.
14. At the recent assessment, the appellant was observed independently ambulating with her cane, including ascending and descending the stairs.
15. The appellant fatigues easily.

Analysis and Conclusions of Law

Under 130 CMR 508.006, MassHealth members who are enrolled in senior care organizations are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal:

(A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001(A);

(B) a determination by the MassHealth behavioral-health contractor, by one of the MassHealth managed care organization (MCO) contractors, or by a senior care organization (SCO), as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's denial of a request for an out-of-area MassHealth managed care provider under 130 CMR 508.002(F); or

(D) the MassHealth agency's disenrollment of a member from a MassHealth managed care provider under 130 CMR 508.002(G).

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

- (1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;
- (2) a decision to deny or provide limited authorization of a requested service, including the type or level of service;
- (3) a decision to reduce, suspend, or terminate a previous authorization for a service;
- (4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following: (a) failure to follow prior-authorization procedures; (b) failure to follow referral rules; and (c) failure to file a timely claim;
- (5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.010;
- (6) a decision by an MCO to deny a request by a member who resides in a rural service area served by only one MCO to exercise his or her right to obtain services outside the MCO's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):
 - (a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the MCO's network;
 - (b) the provider from whom the member seeks service is the main source of service to the member, except that member will have no right to obtain services from a provider outside the MCO's network if the MCO gave the provider the opportunity to participate in the MCO's network under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;
 - (c) the only provider available to the member in the MCO's network does not, because of moral or religious objections, provide the service the member seeks; and

(d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the MCO's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with ADLs and 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 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 personal care agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

(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 MassHealth as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following:

(1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

In this case, the appellant's SCO, CCA, authorized 21 day/evening PCA hours per week as of November 1, 2021, a reduction from the 23.75 day/evening PCA hours that has been previously authorized. The basis of the denial is that the appellant has not demonstrated that additional time is medically necessary. The appellant disagrees and argues that additional PCA assistance has been medically justified in the area of mobility/transfers.

The appellant has not demonstrated additional time is warranted. As noted by CCA, the appellant demonstrated independence with ambulation and all transfers at her assessment. The appellant's daughter testified that the appellant can at times experience dizziness, and has fallen once several month ago. While certainly concerning, these facts do not support the need for consistent physical assistance. As pointed out by CCA, the PCA program does not cover anticipatory needs. Further, CCA representatives suggested alternatives that could assist with the appellant's issues, such as training to perform safer transfers and obtaining additional equipment.

The appeal is dismissed in part as to the PCA time reinstated by CCA and/or negotiated by the parties, and denied in part as to the time requested for PCA assistance with mobility/transfers.

Order for CCA

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Cassandra Horne
Appeals and Grievances Supervisor
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