

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2202034
<b>Decision Date:</b>	5/10/2022	<b>Hearing Date:</b>	04/20/2022
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**

Pro se

**Appearances for Commonwealth Care Alliance (CCA) Senior Care Organization (SCO):**

Cassandra Horne, Appeals and Grievances Supervisor; Jeremiah Mancuso, RN, Appeals and Grievances Nurse; and Amy Stebbins, RN, Manager of Utilization Management



*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>	Denied	<b>Issue:</b>	Senior Care Organization
<b>Decision Date:</b>	5/10/2022	<b>Hearing Date:</b>	04/20/2022
<b>CCA SCO's Reps.:</b>	Cassandra Horne, Appeals and Grievances Supervisor; Jeremiah Mancuso, RN, Appeals and Grievances Nurse; and Amy Stebbins, RN, Manager of Utilization Management	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	No

### Authority

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

## **Jurisdiction<sup>1</sup>**

The appellant received a notice dated 03/02/2022 from Commonwealth Care Alliance (“CCA”), a MassHealth Senior Care Organization (“SCO”) that manages senior benefits, that it denied her level 2 appeal for a denial of personal care attendant (“PCA”) services (130 CMR 420.001; Exhibit 1). The appellant filed this appeal with the Board of Hearings in a timely manner on 03/17/2022 (130 CMR 610.015(B); Exhibit 2).

Members enrolled in a senior care organization have a right to request a fair hearing for a decision to deny or provide limited authorization of a requested service, provided the member has exhausted all remedies available through the SCO’s internal appeals process (130 CMR 610.032(B)(2)). The appellant exhausted CCA’s internal appeals process.

## **Action Taken by MassHealth**

CCA, a MassHealth SCO, denied the appellant’s request for PCA services.

## **Issue**

Was CCA, a MassHealth SCO, correct in denying the appellant’s request for PCA services?

## **Summary of Evidence**

The representatives from CCA appeared telephonically and testified that the appellant has been enrolled in CCA’s OneCare program since 07/01/2014. A request for personal care attendant (“PCA”) services was submitted to CCA by her PCA provider, Tempus (“provider”). CCA assessed the appellant’s needs for PCA services on 01/03/2022. On 01/11/2022, CCA denied the request for PCA services because the appellant did not have a documented need for assistance with two or more activities of daily living (“ADL’s”). The appellant filed a level 1 appeal with CCA and the denial was upheld by CCA’s medical director on 03/02/2022. This action gave rise to the instant appeal before the Board of Hearings.

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<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Mr. Mancuso explained that MassHealth requires that PCA services be approved when a member has a medical need for at least two ADL's. In this case, there is only a documented need for assistance with bathing, and no other. However despite this finding, in February CCA authorized 6.5 hours per week of PCA services for the dates of services of 02/10/2022 to 05/31/2022. Mr. Mancuso explained that three hours per week was approved to assist the appellant with bathing and the remaining 3.5 hours per week were to assist the appellant with other needs.

The appellant appeared at the fair hearing and testified telephonically that she needs assistance with bathing; specifically, in and out of the shower and to help her wash her back. She testified that she did not know that the PCA services that were approved in February were to assist her with her bathing, but she thought the person was assigned to "help her pick up around the house."

When the hearing officer asked the appellant how much PCA time she needs, the appellant responded that she did not know, but at least 7 hours per week. The hearing officer asked the appellant what kind of assistance she needs from the PCA, she did not respond. The appellant ended her participation in the hearing by stating she needed to use the restroom before she abruptly hung up the phone.

## **Findings of Fact**

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

1. The appellant is a MassHealth member enrolled in CCA's OneCare (Testimony; Exhibit 4).
2. CCA is a MassHealth SCO (Testimony; Exhibit 4).
3. This is an initial request for PCA services that was submitted by the appellant's PCA provider, Tempus (Testimony; Exhibit 4).
4. On 01/03/2022, an in-home functional assessment of the appellant's needs was performed by an occupational therapist (Testimony; Exhibit 4).
5. On 01/11/2022, based on the appellant's assessment, CCA denied the appellant's request for PCA services (Testimony; Exhibits 1 and 4).
6. On 02/01/2022, the appellant appealed CCA's reduction of PCA hours at a level 1 appeal.
7. On 03/02/2022, the appellant's level 1 appeal was denied (Testimony; Exhibit 4).

8. On 03/17/2022, the appellant appealed to the Board of Hearings (Testimony; Exhibits 2 and 4).
9. Based on the assessment, CCA determined that the appellant needs assistance with only one ADL, bathing (Testimony; Exhibit 4).
10. The appellant needs assistance with only one ADL, bathing (Testimony; Exhibit 4).
11. At the fair hearing, the appellant testified that she needs assistance with bathing and with "picking up around the house" (Testimony).
12. In February 2022, CCA approved 6.5 hours per week of PCA services to assist the appellant with bathing and with other needs (Testimony).

## **Analysis and Conclusions of Law**

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA 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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) MassHealth covers personal care 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 personal care 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 personal care agency, 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/grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

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

(C) Determining the Number of Hours of Physical Assistance. 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

**(Emphasis added.)**

The appellant, a MassHealth member, is enrolled in the Commonwealth Care Alliance (CCA) Senior Care Organization (SCO). Regulations at 130 CMR 508.008(C), address obtaining services when enrolled in a SCO, as follows:

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.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

The appellant requested personal care attendant (PCA) services from CCA. CCA initially denied the request for PCA time based on the MassHealth regulations that an assessment of the appellant's needs revealed the need for assistance with only one ADL; specifically, bathing. Based on the above regulation, the request for PCA services was denied because there was no documented need for assistance with two or more ADL's. The appellant identified no other ADL with which she needs assistance. Instead, she repeated that she needs assistance with "picking up around the house." The appellant exhausted her appeals with CCA.

In February, CCA approved 6.5 hours per week of PCA services for the appellant. CCA explained that 3.0 hours per week of PCA services were to assist the appellant with her bathing need. She could utilize the remaining 3.5 hours per week with other assistance she requires. At the fair hearing, the appellant testified that she needs more than 6.5 hours per week; however, she did not explain the type of assistance she requires or with which tasks. The appellant did not meet her burden of demonstrating CCA's action is incorrect or not otherwise supported by the regulations or material facts. In fact her testimony that she requires assistance with only bathing proves that CCA's action was correct. Accordingly, this appeal is denied.



## Order for CCA SCO

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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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