

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part, Approved in part	<b>Appeal Number:</b>	2202139
<b>Decision Date:</b>	6/30/2022	<b>Hearing Date:</b>	06/01/2022
<b>Hearing Officer:</b>	Paul C. Moore	<b>Record Closed:</b>	06/22/2022

**Appearances for Appellant:**

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

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

Cassandra Horne, Appeals and Grievances Manager; Kaley Emery, Appeals Supervisor; Jeremiah Mancuso, R.N., Clinical Appeals Nurse; Michelle Shepherd, SCO PCA Supervisor (all from Commonwealth Care Alliance, and all by telephone)

**Spanish Interpreters:**

Ada, Claudia (Interpreters and Translators, Inc.)



*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>	Dismissed in part, Approved in part	<b>Issue:</b>	SCO; PCA Services
<b>Decision Date:</b>	6/30/2022	<b>Hearing Date:</b>	06/01/2022
<b>SCO Reps.:</b>	Cassandra Horne Kaley Emery Jeremiah Mancuso Michelle Shepherd	<b>Appellant Reps.:</b>	Pro se, with [REDACTED] [REDACTED] daughter/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 14, 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 24 day/evening hours and 0 night hours of PCA assistance, per week, to 12.75 day/evening hours and 14 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 23, 2022 (130 CMR 610.015; Exhibit 3, Exhibit 3A). 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 request for PCA services?

## Summary of Evidence

The appellant appeared telephonically at the hearing, and was represented by her daughter/appeal representative, who testified through an interpreter (Exh. 3). CCA was represented by its manager of appeals and grievances, an appeals supervisor, a clinical appeals nurse, and a SCO PCA supervisor, all of whom appeared via Microsoft Teams. On or about December 15, 2021, the appellant's daughter, who is also one of her PCAs, requested a re-evaluation of the appellant's need for PCA services. In response, CCA completed an evaluation, conducted jointly by a Registered Nurse and occupational therapist, on January 12, 2022. As a result of this evaluation, on January 31, 2022, CCA notified the appellant in writing that it was planning to reduce her PCA services from 24 day/evening hours and zero-night hours per week, to 12.75 day/evening hours and fourteen-night hours of PCA services per week, effective April 1, 2022 through December 31, 2022 (Testimony, Exh. 5).<sup>2</sup>

Following the issuance of the January 31, 2022 written notice of the modification of her PCA services, the appellant timely requested a level one internal appeal with CCA on February 9, 2022. A CCA medical director reviewed the decision and the appellant's appeal, and subsequently denied her level one appeal. On March 14, 2022, CCA issued a letter of denial to the appellant, standing by its decision to reduce the appellant's PCA day/evening assistance to 12.75 hours per week, and fourteen-night hours per week (Exh. 5). The appellant then timely filed the instant external appeal with the BOH (Exh. 3).

The appellant, who is over 65 years of age, has been enrolled in the CCA SCO program since July 1, 2017, and lives in the community with her son, who is also her surrogate (Testimony, Exh. 5).<sup>3</sup> Her diagnoses include vascular dementia with behavioral disturbance, type two diabetes with stage three kidney disease, asthma with chronic obstructive pulmonary disease, hypertensive heart failure, atrial fibrillation, anemia, osteoporosis, and chronic gout of her left wrist; she uses a rollator and wheelchair for mobility. She is oxygen-dependent. She was hospitalized at least four times in 2021. The appellant's son/surrogate works full time outside the home (Testimony, Exh. 5). The appellant's son/surrogate works from early morning into the evening hours (Testimony). The appellant's son/surrogate assists her at night, as needed. The appellant's son eats dinner with the appellant approximately three times per week (Testimony).

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<sup>2</sup> During the pendency of this appeal, the appellant has continued to receive 24 hours of day/evening PCA assistance per week, and no nighttime PCA assistance hours.

<sup>3</sup> Pursuant to MassHealth regulation 130 CMR 422.402, a surrogate is defined as "the member's legal guardian, a family member, or other person as identified in the service agreement, who is responsible for performing certain PCA management tasks that the member is unable or unwilling to perform."

CCA's SCO PCA supervisor testified that CCA modified the time requested PCA assistance with mobility/transfers, dressing, undressing, housekeeping, bladder care, transportation to and from medical appointments, and meal preparation and cleanup. Based on the evaluation, the appellant demonstrated more independence with mobility/transfers, bladder care, and dressing and undressing than during the previous annual evaluation. CCA's SCO PCA supervisor stated that during the January, 2022 evaluation, the appellant's son/surrogate requested that nighttime PCA hours be added because the appellant is increasingly incontinent at night and needs assistance showering at night following such episodes (Testimony, Exh. 5).

Following CCA's hearing testimony, the appellant's daughter agreed with the modifications made by CCA with respect to PCA assistance with mobility and transfers (no assistance authorized), dressing (49 minutes per week authorized), undressing (35 minutes per week authorized), bladder care (no assistance authorized), housekeeping (20 minutes per week authorized), transportation to and from medical appointments (90 minutes per week authorized), and special needs (no assistance authorized). The appellant's daughter withdrew the appeal as to these issues.

The only issue that remained in dispute was the modification of PCA assistance time requested for preparing the appellant's breakfast, lunch, and dinner, as well as cleanup after meals (Testimony)

According to CCA's SCO PCA supervisor, during the previous PA period, the appellant was authorized to receive 15 minutes a day of PCA assistance with preparing breakfast and cleaning up after breakfast (only two days per week); 30 minutes a day of PCA assistance with preparing lunch and cleaning up after lunch (only two days per week); and 45 minutes a day for preparing dinner, and cleaning up after dinner (seven days per week) (Testimony, Exh. 8).<sup>4</sup> CCA's SCO PCA supervisor testified that the one of the appellant's PCAs prepares all meals for members of the household, and the appellant does not require a special diet (Testimony).

The appellant's daughter testified that she does not live with the appellant and resides in a separate residence with her own family. She assists the appellant each day as her PCA from 6 am to 8 am and prepares her breakfast. The appellant's daughter testified that she returns as the PCA from 11 am to 1 pm, preparing the appellant's lunch. A second PCA then assists the appellant from 2 pm to 4 pm every day, including preparing her dinner. The appellant's daughter testified that the appellant requires special meal preparation due to dietary restrictions related to the appellant's diagnosis of diabetes. She further testified that the appellant's son/surrogate leaves the home early in the morning to work and is generally not at home to assist with meal preparation and cleanup for the appellant. The appellant's daughter testified that the appellant's son eats dinner with his mother three times per week, and that they share the same meals on those occasions (Testimony).

The appellant's daughter testified that it takes her approximately forty minutes to prepare the appellant's breakfast, and approximately ninety minutes to prepare the appellant's lunch. She estimated that the appellant's evening PCA spends about one hour preparing the appellant's dinner (Testimony).

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<sup>4</sup> It is not clear why the appellant was authorized to receive PCA assistance only two days a week last year for breakfast preparation and cleanup, and for lunch preparation and cleanup.

Following the close of the hearing, by e-mail dated June 10, 2022, the hearing officer briefly reopened the record of this appeal for the submission of additional evidence by CCA. In particular, the hearing officer sought copies of any PCA evaluations and/or prior authorization requests submitted on the appellant's behalf by Stavros, a Personal Care Management Agency, to CCA in 2022 (Exh. 6).<sup>5</sup> On June 22, 2022, the hearing officer received a response to his inquiry via e-mail from the CCA clinical appeals nurse, which states as follows:

SCO members are only assessed for initiation/continuation/increase/decrease of PCA services by CCA and not the PCM (Stavros in this case). I would imagine this is also the case for other MCO's. The assessment is then sent to the PCM and Tempus along with the [prior authorization request] when approved.

The PCM only does PCA evaluations for Integrated Care Organization members.

(Exh. 7)<sup>6</sup>

## Findings of Fact

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

1. The appellant is over age 65, lives in the community with her son/surrogate, and is enrolled in CCA's SCO program (Testimony, Exh. 5).
2. Her diagnoses include vascular dementia with behavioral disturbance, type two diabetes with stage three kidney disease, asthma with chronic obstructive pulmonary disease, hypertensive heart failure, atrial fibrillation, anemia, osteoporosis, and chronic gout of her left wrist (Testimony, Exh. 5).
3. The appellant uses a rollator and wheelchair for mobility, and she is oxygen-dependent (*Id.*).
4. In December, 2021, the appellant's adult daughter, who is one of her PCAs, requested a re-evaluation of the appellant's need for PCA services (Testimony, Exh. 5).
5. CCA completed an evaluation of the appellant, conducted jointly by a Registered Nurse and occupational therapist, on January 12, 2022 (Testimony).

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<sup>5</sup> Pursuant to the Fair Hearing Rules at 130 CMR 610.085, "Reopening Before Decision:" "After the close of the hearing and before a decision, the hearing officer may reopen the record or, if appropriate, the hearing if he or she finds need to consider further testimony, evidence, materials or legal rules before rendering his or her decision. . . ."

<sup>6</sup> Separately, in response to the hearing officer's directive reopening the hearing record, the CCA appeals and grievances manager forwarded to the hearing officer a copy of the written evaluation of the appellant's personal needs completed by CCA in 2021 (Exh. 8).

6. Based on the January 12, 2022 evaluation, the appellant demonstrated more independence with mobility/transfers, bladder care, and dressing and undressing than during the previous annual evaluation (Testimony, Exh. 5).
7. During the January, 2022 evaluation, the appellant's son/surrogate requested that nighttime PCA hours be added because the appellant is increasingly incontinent at night and needs assistance showering at night following such episodes (Testimony).
8. CCA notified the appellant in writing that it was planning to reduce her PCA services from 24 day/evening hours and zero-night hours per week, to 12.75 day/evening hours and fourteen night hours of PCA services per week, effective April 1, 2022 through December 31, 2022 (Testimony, Exh. 5).
9. The appellant timely requested a level one internal appeal of this decision from CCA on February 9, 2022 (Testimony).
10. A CCA medical director reviewed the decision and the appellant's appeal, and subsequently denied her level one appeal (Testimony).
11. On March 14, 2022, CCA issued a letter of denial to the appellant, standing by its decision to reduce the appellant's PCA day/evening assistance to 12.75 hours per week, and fourteen night hours per week (Exh. 5).
12. The appellant subsequently filed a timely external appeal of CCA's level one appeal denial with the BOH (Exh. 3).
13. During the pendency of this appeal, the appellant has continued to receive 24 hours of day/evening PCA assistance per week, and no nighttime PCA assistance hours (Testimony, Exh. 5).
14. Following CCA's hearing testimony, the appellant's daughter agreed with the modifications made by CCA with respect to PCA assistance with mobility and transfers (no assistance authorized), dressing (49 minutes per week authorized), undressing (35 minutes per week authorized), bladder care (no assistance authorized), housekeeping (20 minutes per week authorized), transportation to and from medical appointments (90 minutes per week authorized), and special needs (no assistance authorized).
15. During the previous PA period, the appellant was authorized to receive 15 minutes a day of PCA assistance with preparing breakfast and cleaning up after breakfast (only two days per week); 30 minutes a day of PCA assistance with preparing lunch and cleaning up after lunch (only two days per week); and 45 minutes a day for preparing dinner and cleaning up after dinner (seven days per week) (Testimony, Exh. 8).
16. CCA determined that one of the appellant's PCAs lives with the appellant, and that she routinely prepares all meals for all members of the household, including the appellant and

her son/surrogate (Testimony).

17. With this PA request, CCA authorized no PCA assistance time for the appellant's meal preparation and cleanup (Testimony).
18. The appellant's daughter/PCA does not reside with the appellant, and lives in a separate residence with her own family (Testimony).
19. The appellant's daughter/PCA works as her PCA from 6 am to 8 am, prepares her breakfast, and subsequently returns to work as her PCA from 11 am to 1 pm, preparing the appellant's lunch (Testimony).
20. A second PCA then assists the appellant from 2 pm to 4 pm every day, including preparing her dinner (Testimony).
21. The appellant's son/surrogate leaves the home early in the morning to go to work and is generally not at home to assist with meal preparation and cleanup for the appellant (Testimony).
22. Due to her diabetes diagnosis, the appellant has special dietary needs (Testimony).
23. The appellant's son/surrogate shares a dinner meal with the appellant approximately three days per week (Testimony).
24. The appellant's daughter/PCA testified that it takes her approximately forty minutes to prepare the appellant's breakfast, and approximately ninety minutes to prepare the appellant's lunch (Testimony).
25. The appellant's daughter/PCA estimated that it takes the appellant's evening PCA about an hour to prepare her dinner meal (Testimony).

## **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.**

(Emphasis added)

PCA Assistance with Mobility/Transfers, Dressing, Undressing, Bladder Care, Housekeeping, Transportation to/from Medical Appointments and Special Needs

At hearing, the appellant’s daughter/appeal representative agreed that CCA modifications in the areas of mobility/transfers, dressing, undressing, bladder care, housekeeping, transportation to/from medical appointments, and special needs were appropriate, and no longer contested the modifications made by CCA.

Therefore, these portions of the appeal are DISMISSED.

PCA Assistance with Meal Preparation and Cleanup

#### A. Breakfast

The appellant's daughter/appeal representative requested 40 minutes of PCA assistance for preparation of the appellant's breakfast, seven days per week. Last year, the appellant received 15 minutes a day of PCA assistance with preparing breakfast and cleaning up after breakfast, two days per week.

CCA noted that the appellant resides with family members and asserted that they are responsible for preparing the appellant's breakfast. Thus, no PCA assistance time was authorized for the appellant's breakfast preparation and cleanup.

The appellant lives with her son/surrogate, but he is at work and not in the home to provide assistance with preparing the appellant's breakfast. Further, due to the appellant's diagnosis of diabetes, the appellant requires a special diet. CCA did not dispute that the appellant needs assistance with meal preparation and cleanup. The evidence shows that the only family member who lives with the appellant is unavailable to prepare the appellant's breakfast due to work obligations.

Pursuant to MassHealth regulations at 130 CMR 422.401(A), above, MassHealth only pays for a PCA to physically assist a member to prepare meals. Time spent by a PCA waiting for food to cook or for water to boil is not hands-on physical assistance.

In view of these circumstances, the hearing officer determines that 30 minutes of PCA assistance every day is medically necessary for the appellant for preparation of her breakfast, and subsequent cleanup. This portion of the appeal is APPROVED IN PART.

#### B. Lunch

The appellant's daughter/appeal representative requested 90 minutes of PCA assistance for preparation of the appellant's lunch, seven days per week. Last year, the appellant received 30 minutes a day of PCA assistance with preparing lunch and cleaning up after lunch, two days per week.

Again, CCA noted that the appellant resides with family members, and asserted that they are responsible for preparing the appellant's lunch. Thus, no PCA assistance time was authorized for the appellant's lunch preparation and cleanup.

The appellant lives with her son/surrogate, but he is at work and not in the home to provide assistance with preparing the appellant's lunch. Further, due to the appellant's diagnosis of diabetes, the appellant requires a special diet. CCA did not dispute that the appellant needs assistance with meal preparation and cleanup. The evidence shows that the only family member who lives with the appellant is unavailable to prepare the appellant's lunch due to work obligations.

Pursuant to MassHealth regulations at 130 CMR 422.401(A), above, MassHealth only pays for a PCA to physically assist a member to prepare meals. Time spent by a PCA waiting for food to cook or for water to boil is not hands-on physical assistance.

In view of these circumstances, the hearing officer determines that 45 minutes of PCA assistance every day is medically necessary for the appellant for preparation of her lunch, and subsequent cleanup.

This portion of the appeal is also APPROVED IN PART.

### C. Dinner

The appellant's daughter/appeal representative requested one hour of PCA assistance for preparation of the appellant's dinner, seven days per week. Last year, the appellant received 45 minutes a day of PCA assistance with preparing dinner and cleaning up after dinner, seven days per week.

Again, CCA noted that the appellant resides with family members, and asserted that they are responsible for preparing the appellant's dinner. Thus, no PCA assistance time was authorized for the appellant's dinner preparation and cleanup.

The appellant lives with her son/surrogate, but he is sometimes at work in the evening and not always available to provide assistance with preparing the appellant's dinner. Further, due to the appellant's diagnosis of diabetes, the appellant requires a special diet. CCA did not dispute that the appellant needs assistance with meal preparation and cleanup.

However, the evidence reflects that the appellant's son/surrogate does prepare a meal for himself and the appellant, to be shared, approximately three days per week.

Pursuant to MassHealth regulations at 130 CMR 422.401(A), above, MassHealth only pays for a PCA to physically assist a member to prepare meals. Time spent by a PCA waiting for food to cook or for water to boil is not hands-on physical assistance.

In view of these circumstances, the hearing officer determines that 45 minutes of PCA assistance, four days per week (on days when the appellant does not share a meal with her son), is medically necessary for the appellant for preparation of her dinner, and subsequent cleanup.

This portion of the appeal is also APPROVED IN PART.

## **Order for CCA**

Remove "aid pending." Rescind notices of January 31, 2022 and March 14, 2022. Send notice to the appellant authorizing her for 24.5 hours of day/evening PCA assistance per week, and 14 nighttime hours of PCA assistance per week, for the PA period April 1, 2022 through December 31, 2022.

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

## **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 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

cc: [REDACTED]