


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part; Approved in part and Remanded	Appeal Number:	2204166
Decision Date:	8/16/2022	Hearing Date:	07/07/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

 *via* telephone
(son) *via* telephone


Appearance for Senior Care Organization (SCO):

Cheryl Ellis, MD, SCO Medical Director *via* telephone



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part; Denied in part; Approved in part and Remanded	Issue:	SCO Prior Authorization (PA) Personal Care Assistance (PCA)
Decision Date:	8/16/2022	Hearing Date:	07/07/2022
MassHealth's Rep.:	Cheryl Ellis, M.D.	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 30, 2022, the SCO notified the appellant that it was decreasing the appellant's PCA services from 29.5 hours of per week to 22 hours per week. (See 130 CMR 508.001; 508.008; 422.000 *et seq* Exhibit (Ex.) 1, pp. 2-6; Ex. 4, pp. 25-29). The appellant filed this appeal in a timely manner on May 26, 2022. (See 130 CMR 610.015(B) and Ex. 1, p. 1). Modification of a PA request for PCA services by an SCO is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by the SCO

The SCO decreased the appellant's PCA services from 29.5 hours per week to 22 hours per week.

Issue

The appeal issue is whether the SCO was correct, pursuant to 130 CMR 508.001, 508.008 and 422.000 *et seq*, in determining the appellant's need for PCA services.

Summary of Evidence

The SCO representative stated that she has been the Medical Director for the SCO's Long-Term Services and Supports. The SCO representative specializes in physical medicine and rehabilitation. The

SCO representative was in private practice assisting disabled persons for 25 years and has been in her present position for the last 13 years.

The appellant is a female who is over the age of 65. The appellant lives alone. According to the appellant's primary care physician, she has diagnoses of multiple sclerosis, macular degeneration causing legal blindness, abnormality of gait and mobility, hypertension, diabetes mellitus, chronic obstructive pulmonary disorder (COPD), and peripheral vascular disease. The appellant joined the SCO in 2016.

On February 7, 2022, a registered nurse working for the SCO (SCO nurse) completed a functional assessment in the appellant's home. (Ex. 4, pp. 3-14). The SCO nurse observed the appellant performing activities of daily living (ADLs) and instrumental ADL's (IADLs). (*Id.*). Based on these observations, and in accordance with the MassHealth regulations concerning PCA services, the SCO nurse determined that the appellant required 22 hours per week of PCA assistance with ADLs and IADLs. (*Id.*). On February 16, 2022, the SCO representative reviewed the SCO nurse's assessment and approved the reduction of the appellant's PCA services from 29.5 hours per week to 22 hours per week. The appellant was notified of this change on February 18, 2022. (Ex. 4, pp. 15-24). After an internal appeal¹, the SCO confirmed the determination reducing the appellant's PCA services in a notice dated March 30, 2022. (Ex. 1, pp. 2-6; Ex. 4, pp. 25-29).

The SCO representative stated that the reviewer used certain terms in determining the ability of the appellant to participate in the activity. The SCO representative explained that that "extensive" or "severe" meant that the PCA had to provide approximately 75% of the assistance and "maximum" meant that the PCA had to provide 80%-90% of the assistance.

The SCO representative stated that because of the functional assessment, the SCO decreased the time for six ADLs: transfers, ambulation within the home, dressing, eating, toileting, personal hygiene, and bathing. The SCO also decreased the time for two IADLs: meal preparation and medication management. Finally, the SCO increased the time for four IADLs: housework, laundry, shopping, and transportation. During the hearing, the appellant accepted the reductions for transfers, ambulation within the home, dressing, eating, bathing, and medication management and the increases in four of the IADLs.

The appellant contested the following three modifications.

1. Toileting (Ex. 4, pp. 5-6):

The SCO determined that appellant was independent with transfers onto and off the toilet. (Ex. 4, p. 5). The SCO found that the appellant required extensive assistance with cleaning herself after toilet use and adjusting her clothing and limited assistance with changing pad/diaper/device/change clothing. (Ex. 4, pp. 5-6). The nurse reviewer wrote the following:

Member reports she is able to transfer on and off the toilet independently using her

¹ The SCO representative did not state when the appellant submitted this internal appeal, and no documentation of that appeal was included with the written documentation the SCO submitted into the record.

toilet safety frame. She reports she is able to clean herself after urinating but requires hands on assistance cleaning herself after having a bowel movement due to being legally blind and having hand tremors that make it difficult to thoroughly clean herself. Member has incontinence of urine and wears pads and/or depends at all time periods she requires assistance with changing her incontinence supplies and adjusting her clothing due to tremors, poor balance and limited vision. Member reports she is continent of bowel. PCA and or caregiver assist member with cleaning herself after a bowel movement, changing her incontinence supplies and adjusting her clothing as needed. (Ex. 4, p. 6).

The SCO representative testified that the appellant was receiving 140 minutes per week of assistance with toileting last year. Based on the SCO assessment, the time was reduced to 80 minutes per week. (Ex. 4, p. 6).

The appellant's son stated that the appellant is now incontinent as to bowels, having increased since February. The appellant's son stated that her bowel incontinence recurs every three days or so. The appellant is also incontinent as to bladder every day. The SCO representative stated the reviewer determined that the appellant's son was available as the "natural caregiver" to provide 80 minutes of assistance per week, in addition to the PCA's 80 minutes of assistance. The appellant's son stated that he was available to assist 80 minutes per week. The SCO representative stated that an SCO nurse reviewer will be returning to the appellant's home in about a week to reassess the appellant's needs and that the appellant and her son should make the reviewer aware of the bowel incontinence.

2. Personal Hygiene (Ex. 4, pp. 6-7):

The nurse reviewer determined that the appellant was totally dependent on the PCA for combing/braiding and washing hair and required extensive assistance with washing her face, hands and teeth. (Id.). The nurse reviewer commented that:

Member reports she is able to wash her hands and face independently. Member requires hands on assistance with cleaning her dentures due to being blind and having tremors. She is not able to grasp supplies needed to thoroughly clean her dentures. PCA cleans members [sic] dentures each night for her. Member reports she no longer shaves or wears makeup. PCA assists member daily with washing, drying and combing her hair due to tremors, neuropathy and painful swelling of knuckles decreasing members [sic] fine motor skills. Member has difficulty grasping items in her hands to complete the task. Member is not able to lift the shampoo bottle and squeeze shampoo into hands and lift her arms to her head in the shower for washing her hair due to tremors, decreased fine motor skills and poor balance while sitting in shower. Member has a shower chair she sits on in the shower for PCA to complete her washing. (Id.).

The SCO representative stated that based on this, the reviewer determined that the appellant required extensive assistance with personal hygiene and allotted 91 minutes per week for this activity. (Id.). The SCO representative stated that this is a reduction from the 210 minutes per week she received for this activity last year.

The appellant's son stated that the appellant has dentures. It takes a couple of minutes a day (under five minutes) to clean the dentures. The appellant's son that he will assist in brushing or combing the appellant's hair. Generally, the PCA will do it better, and it takes the PCA 10 minutes per day to do this. The appellant does not shave. The PCA will apply lotion to the appellant's neck and spine. It takes about 10 minutes per day to make sure this is rubbed in. The PCA will also rub a special foot cream into the appellant's feet, and this also takes about 10 minutes total for both feet.

The SCO representative referred to the nurse reviewer's report from February 2022. She stated that the report states that the nurse reviewer determined that PCA took about 10 minutes per day to brush/comb and wash hair, and 3 minutes per day to clean her dentures. (Ex. 4, p. 6). The SCO determined that the appellant required 91 minutes of PCA assistance after totaling those numbers.

3. Meal Preparation (Ex. 4, p. 9):

The SCO representative stated that the nurse reviewer determined that the appellant had great difficulty with food preparation (such as cutting up the food) and plate/utensil set up and cleaning. Great difficulty means that the appellant is able to perform little to no of this activity. Based on this, the nurse reviewer determined that the appellant requires 245 minutes per week for meal preparation. (Ex. 4, p. 9). The SCO then made a functional adjustment to meal preparation and added a further 70 minutes per week for a total of 310 minutes per week. (Id.). This is a reduction for the time for meal preparation in the previous year, which was 420 minutes per week. The appellant's son stated that it took more than what was described to prepare the appellant's meals.

Findings of Fact

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

1. The appellant is a female who is over the age of 65. (Testimony of the SCO representative).
2. The appellant lives alone. (Testimony of the SCO representative).
3. According to the appellant's primary care physician, she has diagnoses of multiple sclerosis, macular degeneration causing legal blindness, abnormality of gait and mobility, hypertension, diabetes mellitus, COPD, and peripheral vascular disease. (Testimony of the SCO representative).
4. The appellant joined the SCO in 2016. (Testimony of the SCO representative).
5. On February 7, 2022, the SCO nurse completed a functional assessment in the appellant's home. (Ex. 4, pp. 3-14).
6. The SCO nurse observed the appellant performing ADLs and IADLs. (Ex. 4, pp. 3-14).
7. Based on these observations, and in accordance with the MassHealth regulations concerning PCA services, the SCO nurse determined that the appellant required 22 hours per week of PCA assistance with ADLs and IADLs. (Ex. 4, pp. 3-14).

8. On February 16, 2022, the SCO representative reviewed the SCO nurse's assessment and approved the reduction of the appellant's PCA services from 29.5 hours per week to 22 hours per week. The appellant was notified of this change on February 18, 2022. (Ex. 4, pp. 15-24).
9. After an internal appeal, the SCO confirmed the determination reducing the appellant's PCA services in a notice dated March 30, 2022. (Ex. 1, pp. 2-6; Ex. 4, pp. 25-29).
10. The SCO decreased the time for six ADLs: transfers, ambulation within the home, dressing, eating, toileting, personal hygiene, and bathing. (Ex. 4, pp. 3-14; Testimony of the SCO representative).
11. The SCO also decreased the time for two IADLs: meal preparation and medication management. (Ex. 4, pp. 3-14; Testimony of the SCO representative).
12. Finally, the SCO increased the time for four IADLs: housework, laundry, shopping, and transportation. (Ex. 4, pp. 3-14; Testimony of the SCO representative).
13. During the hearing, the appellant accepted the reductions for transfers, ambulation within the home, dressing, eating, bathing, and medication management and the increases in four of the IADLs. (Testimony of the appellant).
14. The appellant contested the modifications to toileting, personal hygiene, and meal preparation. (Testimony of the appellant).
15. Toileting:
 - a. The SCO determined that appellant was independent with transfers onto and off the toilet. (Ex. 4, p. 5).
 - b. The SCO found that the appellant required extensive assistance with cleaning herself after toilet use and adjusting her clothing and limited assistance with changing pad/diaper/device/change clothing. (Ex. 4, pp. 5-6).
 - c. The nurse reviewer wrote the following:

Member reports she is able to transfer on and off the toilet independently using her toilet safety frame. She reports she is able to clean herself after urinating but requires hands on assistance cleaning herself after having a bowel movement due to being legally blind and having hand tremors that make it difficult to thoroughly clean herself. Member has incontinence of urine and wears pads and/or depends at all time periods she requires assistance with changing her incontinence supplies and adjusting her clothing due to tremors, poor balance and limited vision. Member reports she is continent of bowel. PCA and or caregiver assist member with cleaning herself after a bowel movement, changing her incontinence supplies and adjusting her clothing as needed.

(Ex. 4, p. 6).

- d. The appellant received 140 minutes per week of assistance with toileting last year. (Testimony of the SCO representative).
- e. Based on the SCO assessment, the time was reduced to 80 minutes per week. (Ex. 4, p. 6).
- f. The SCO also assessed that the appellant's son, her natural caregiver, was responsible for a further 80 minutes per week. (Ex. 4, p. 6).
- g. The appellant has become incontinent as to bowel since February 2022. (Testimony of the appellant's son).

16. Personal hygiene:

- a. The nurse reviewer determined that the appellant was totally dependent on the PCA for combing/braiding and washing hair and required extensive assistance with washing her face, hands and teeth. (Id.).
- b. The nurse reviewer commented that:

Member reports she is able to wash her hands and face independently. Member requires hands on assistance with cleaning her dentures due to being blind and having tremors. She is not able to grasp supplies needed to thoroughly clean her dentures. PCA cleans members [sic] dentures each night for her. Member reports she no longer shaves or wears makeup. PCA assists member daily with washing, drying and combing her hair due to tremors, neuropathy and painful swelling of knuckles decreasing members [sic] fine motor skills. Member has difficulty grasping items in her hands to complete the task. Member is not able to lift the shampoo bottle and squeeze shampoo into hands and lift her arms to her head in the shower for washing her hair due to tremors, decreased fine motor skills and poor balance while sitting in shower. Member has a shower chair she sits on in the shower for PCA to complete her washing. (Ex. 4, p. 6).

- c. The SCO representative stated that based on this, the reviewer determined that the appellant required extensive assistance with personal hygiene and allotted 91 minutes per week for this activity. (Ex. 4, p. 6).
- d. This is a reduction from the 210 minutes per week she received for this activity last year. (Testimony of the SCO representative).

17. Meal preparation:

- a. The nurse reviewer determined that the appellant had great difficulty with food

preparation (such as cutting up the food) and plate/utensil set up and cleaning. (Ex. 4, p. 9).

- b. Great difficulty means that the appellant is able to perform little to no of this activity. (Ex. 4, p. 9).
- c. Based on this, the nurse reviewer determined that the appellant requires 245 minutes per week for meal preparation. (Ex. 4, p. 9).
- d. The SCO then made a functional adjustment to meal preparation and added a further 70 minutes per week for a total of 310 minutes per week. (Ex. 4, p. 9).
- e. This is a reduction for the time for meal preparation in the previous year, which was 420 minutes per week. (Testimony of the SCO representative).

Analysis and Conclusions of Law

MassHealth members who are 65 years of age or older may enroll in a Senior Care Organization (SCO) pursuant to 130 CMR 508.008(A). (130 CMR 508.001(C)). To voluntarily enroll in a senior care organization, a MassHealth Standard member must meet all of the following criteria:

- (1) be 65 years of age or older;
- (2) live in a designated service area of a senior care organization;
- (3) not be diagnosed as having end-stage renal disease;
- (4) not be subject to a six-month deductible period under 130 CMR 520.028: *Eligibility for a Deductible*;
- (5) not be a resident of an intermediate care facility for individuals with intellectual disabilities (ICF/ID); and
- (6) not be an inpatient in a chronic or rehabilitation hospital. (130 CMR 508.008(A)).

MassHealth will notify members of the availability of an SCO in their service area and of the procedures for enrollment. (130 CMR 508.008(B)). An eligible member may voluntarily enroll in any SCO in the member's service area. (*Id.*). A service area is the specific geographical area of Massachusetts in which an SCO agrees to serve its contract with MassHealth and the Centers for Medicare & Medicaid Services. (*Id.*). Service area listings may be obtained from MassHealth or its designee. (*Id.*). The list of SCOs that MassHealth will make available to members will include those SCOs that contract with MassHealth and provide services within the member's service area. (*Id.*). When a member chooses to enroll in an SCO in accordance with the requirements under 130 CMR 508.008, the SCO will deliver the member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. (130 CMR 508.008(C)).

The SCO must conduct reevaluations at least annually, in order to accurately represent the member's need for physical assistance with ADLs and IADLs and consider the member's physical and cognitive conditions and resulting functional limitations to determine ability to benefit from PCA services. (130 CMR 422.422(D)). MassHealth (through the SCO) covers activity time performed by a PCA in aiding with the ADLs and IADLs specified in the reevaluation, and as authorized by

MassHealth (through the SCO). (130 CMR 422.411(A)).

ADLs include assistance with mobility, taking medications, bathing or grooming, dressing, passive range of motion exercises, eating, and toileting. (130 CMR 422.402; 130 CMR 422.410(A)). IADLs are specific activities that are instrumental to the care of the member's health and are performed by a PCA. (130 CMR 422.402). The regulations list several specific listed activities as IADLs, which include (relevantly) physically assisting a member to prepare meals and then clean-up afterwards. (130 CMR 422.410(B)).

This appeal initially concerned modifications to six ADLs and two IADLs. During the hearing, the appellant accepted reductions in the time allotted for transfers, ambulation within the home, dressing, eating, bathing, and medication management. There were increases in four of the IADLs, which the appellant did not contest. The SCO may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*). The MassHealth Board of Hearings will also dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). Since the appellant did not contest the increase in time for IADLs or the reductions to transfers, ambulation within the home, dressing, eating, bathing, and medication management, concerning these ADLs/IADLs the appeal is DISMISSED.

The appellant did contest the reduction in time for toileting, personal hygiene, and meal preparation. The appellant has not shown by a preponderance of the evidence that the SCO incorrectly determined the allotment of time for meal preparation and personal hygiene. The appellant's son's testimony concerning how long it took to perform the several activities that comprise personal hygiene did not substantially differ from the SCO's determination. As for meal preparation, neither the appellant nor her son offered very much testimony. In the area of toileting, the appellant and her son did state that the appellant has become incontinent as to bowel since the SCO's assessment in February. The record therefore would seem to support an increase in time for toileting as a result but there is insufficient evidence to determine what that increase should be.

For the above stated reasons, the appeal is DENIED IN PART concerning personal hygiene and meal preparation. The appeal is APPROVED IN PART and REMANDED to make a new determination concerning toileting.

Order for the SCO

The appeal is remanded to the SCO to make a new determination concerning toileting based on the appellant's bowel incontinence.

Notification of Your Right to Appeal to Court

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

decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

United Healthcare SCO, Attn: Cheryl A. Ellis, M.D., LTC Medical Director, 950 Winter St., Ste. 3800, Waltham, MA 02451

[REDACTED]