

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2204635

Decision Date: 9/9/2022

Hearing Date: 07/20/2022

Hearing Officer: Radha Tilva

Appearance for Appellant:

Pro se

Appearance for CCA:

Cassandra Horne, Appeals and
Grievances Supervisor;
Michelle Shephard, PCA Manager;
Nicole Ward, PCA Supervisor;
Asa Thornhill, PCA Supervisor;
Cailee Emery, Appeals Supervisor



*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	Issue:	PA – PCA
Decision Date:	9/9/2022	Hearing Date:	07/20/2022
MassHealth's Rep.:	Cassandra Horne, Michelle Shephard, Nicole Ward, Asa Thornhill, Cailee Emery	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor	Aid Pending:	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 June 8, 2022, Commonwealth Care Alliance¹ (hereinafter CCA) modified appellant's prior authorization request for PCA hours from 26 day and 0 nighttime hours to 16.25 day hours and 0 night hours for the period June 1, 2022 to May 31, 2023 (Exhibit 1). The appellant filed this appeal in a timely manner on June 16, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Aid pending protection has been placed on the case. Challenging a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by CCA

CCA modified appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether CCA is correct in modifying appellant's prior authorization request for

¹ Commonwealth Care Alliance is a MassHealth managed care contractor as defined by regulations at 130 CMR 610.004 and described in regulations at 130 CMR 508.000.

PCA services.

Summary of Evidence

At hearing CCA was represented telephonically by the Appeals and Grievances Manager, a PCA Manager, two PCA Supervisors and an Appeals Supervisor. The appellant appeared independently by telephone. CCA explained that appellant is enrolled with a CCA SCO program since September 1, 2021. On May 19, 2022 CCA received an initial request for a continuation of 26 day/evening hours per week of PCA services for the appellant for the time prior authorization period of June 1, 2022 through May 31, 2023 from her PCM agency, Tempus Unlimited. The request was reviewed by a physician at CCA and denied on June 7, 2022. Written notification of the modification was mailed on June 8, 2022. Appellant's current 26 PCA hours were protected until August 20, 2022. The appellant is in her sixties with a history of anxiety, chronic pain, sciatica, hypertension, COPD, diabetes, and kidney disease (Exhibit 5, p. 6). CCA conducted an assessment on May 5, 2022 as there was no prior assessment on file (Exhibit 5, pp. 59-67). The assessment was done at appellant's home in the presence of an occupational therapist and RN. The following modifications were discussed at hearing:

Mobility

Appellant was given 0 minutes per week for mobility after the assessment as appellant was observed being able to walk in the room. She was observed to have a slow and steady gait but was able to get in and out of bed independently. At the time of the assessment the appellant was observed to be walking with a cane. The appellant testified that she has a walker now to help her move around the house. The appellant stated that she has sciatica in her back and neuropathy in her feet which causes swelling. In addition, she also has COPD and asthma. The appellant testified that sometimes she gets dizzy when she stands up and she must sit back down due to the vertigo she experiences. The appellant testified that her vertigo is happening more frequently. The appellant stated that the PCA assists her sometimes with walking as she is not stable.

Medication

Appellant was given 20 minutes per week for medications. The surrogate reported that the PCA gets all the medication for appellant from the pharmacy and places them in a weekly planner and the PCA provides reminders for the medications throughout the day. No testimony was provided from appellant as to medication reminder.

Showering

Appellant was given 140 minutes per week for showering. The member reports that PCA assists member to get into shower safely. Appellant needs physical help to get into shower due to lower body pain and limited range of motion in her bilateral arms. The appellant has to use a grab bar. The appellant can wash her upper body and peri area, but the PCA washes her hair, back, lower body, and feet.

The appellant testified that she has pain in her left shoulder and that she takes two showers per day. The appellant also stated that it takes her 30 minutes per day to shower and reported that her hair is washed daily and braided up. At the end of the hearing CCA increased the time for showering to 30 minutes daily or 210 minutes per week. The appellant stated that she agreed to the 210 minutes per week for showering. The time will thus be increased to 210 minutes per week.

Grooming

Appellant was given 70 minutes per week for grooming. PCA assists with lotion application to upper and lower body and clipping fingernails and toenails. The member can complete her oral care independently. The appellant testified that her hair takes time as it has to be braided up daily. The appellant testified that the PCA takes about 30 to 35 minutes daily to do her hair. The PCA does not blow dry daily. The appellant stated that she cannot do any of the grooming herself. CCA responded to appellant's testimony and increased the time to 105 minutes per week. The appellant stated that she was fine with the increase.

Dressing/Undressing

Appellant was given 70 minutes per week for dressing and 70 minutes per week for undressing because appellant has shoulder pain. The PCA assists with upper body dressing, putting on her undergarments, socks, shoes, and clothes. The PCA also returns to help appellant dress for bed at night into her pajamas. The appellant stated that she needs more time getting dressed at night. The appellant testified that it takes about 15 to 20 minutes to undress appellant. If something is going over her head or the PCA is assisting with undergarments, it usually takes the PCA more time. MassHealth stated that they would increase the time to 105 minutes per week for dressing.

Eating

CCA gave 0 minutes per week for eating as appellant is independent with eating and can grasp her utensils independently. The appellant testified that she can eat on her own.

Bladder and Bowel Care

Appellant was given 0 minutes per week for bladder care. Appellant can get on and off the toilet independently and can clean her genital area independently. Appellant reported occasional urinary incontinence. The surrogate reported that on rare occasions the appellant will ask for assistance with dressing. The appellant agreed that she is independent with toileting, however, stated that there are instances where she needs assistance getting to the restroom when she is experiencing vertigo. As the bladder and bowel care were undisputed the time will remain at 0 minutes per week.

Laundry

CCA gave the appellant 60 minutes per week for laundry. The member does not do her own laundry due to lower body pain and the inability to carry the basket to the basement. The PCA does

the laundry weekly for the member. The appellant stated that she does 2 to 3 loads a week of laundry for appellant. CCA stated that they can increase laundry to 120 minutes per week. The appellant agreed to the increase in time for laundry.

Shopping

CCA was given 60 minutes per week for shopping. The appellant does not regularly go grocery shopping due to COVID but will go occasionally when she is feeling well. The appellant stated that the grocery store is approximately 25 minutes away from her. The appellant will go to the local grocery store which is about 15 minutes away. She will take The Ride to the grocery store. The appellant stated she is not supposed to go to the grocery store without her PCA but does occasionally.

Housekeeping

Appellant was given 60 minutes per week for housekeeping. The appellant does not clean on her own due to lower body pain, poor reach, and dizziness. The appellant stated that she lives in a one-bedroom home with no roommates. The appellant further stated that she has no incontinence issues. CCA increased housekeeping to 90 minutes and appellant was fine with that.

Meal Preparation

CCA provided appellant with 105 minutes per week for breakfast, 105 minutes for lunch, and 210 minutes for dinner for a total of 60 minutes per day. Appellant can use the microwave but needs assistance with all meals daily as appellant cannot stand for long periods of time. Appellant does use pre-packaged foods and can to the fridge independently. The PCA comes back in the evening to help appellant with dinner. The appellant stated that her PCA needs a little bit more time with meal preparation. The appellant stated that she does not have a special diet and appellant does not receive any pre-packaged foods. After hearing appellant's testimony CCA increased the time for lunch to 140 minutes per week. The appellant stated that the increase was acceptable.

Transportation

CCA gave 0 time for transportation as it was reported that CCA is used for transportation. It was noted that at times her son will also take her to appointments. The appellant stated that she has the ride so she is fine with 0 time being given for transportation.

At the end of the hearing, after hearing appellant's testimony, CCA had increased the PCA time to 20 hours and 15 minutes per week. The appellant stated that she needs at least 22 hours per week. The appellant stated that two hours in the morning and two in the afternoon is not feasible. It was explained to appellant that she can get a new assessment done if there is a significant change in her health status.

Findings of Fact

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

1. Appellant has been enrolled with CCA since September 1, 2021.
2. On May 19, 2022 CCA received an initial request for a continuation of 26 day/evening hours per week of PCA services for the appellant for a prior authorization period of June 1, 2022 through May 31, 2023.
3. The prior authorization request was denied on June 7, 2022 and a denial was sent the following day.
4. Appellant was previously receiving 26 PCA hours per week (which was protected) through August 20, 2022.
5. The appellant is in her sixties with a history of anxiety, chronic pain, sciatica, hypertension, COPD, diabetes, and kidney disease.
6. An assessment was conducted by CCA's team on May 5, 2022.
7. CCA modified the time to 16.25 hours per week based on the assessment.
8. At hearing the PCA time was increased to 20 hours and 15 minutes.
9. The only remaining activities that remained at issue after the hearing was the time allotted with assistance with medications, mobility, and shopping.

Analysis and Conclusions of Law

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 or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;

- (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. See 130 CMR 422.403(C).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADL'S) (130 CMR 422.410(A)).

130 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living. 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 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. 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 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) The MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The requested services must also be medically necessary for prior authorization to be approved. 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) A service is “medically necessary” if:

- (1) it is reasonably calculated to prevent, diagnose, prevent 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. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the 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. See 130 CMR 450.204

At the end of the hearing CCA increased the time for the PCA to 20 hours and 15 minutes per week for the prior authorization period of June 1, 2022 to May 31, 2023. CCA approved or the appellant agreed to the time requested for assistance with all activities with the exception of time requested for assistance with mobility, medication assistance, and shopping.

Based on the record and testimony presented there is no evidence the appellant requires additional physical assistance with mobility, medication assistance, or shopping. The appellant testified that she can walk with a walker and she was observed by the assessment team ambulating independently. Moreover, the appellant testified herself that she sometimes goes to the closer grocery store without her PCA. Based on the above analysis this appeal is DISMISSED in part as to the activities CCA and appellant agreed upon and DENIED in part. CCA should increase the time for PCA hours to 20 hours and 15 minutes per week.

Order for CCA

Stop aid pending and modify PCA hours to 20 hours and 15 minutes per week.

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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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