

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part, Approved in part, Denied in part	Appeal Number:	2205005
Decision Date:	10/17/2022	Hearing Date:	09/29/2022
Hearing Officer:	Paul C. Moore	Record Closed:	10/07/2022

Appearances for Appellant:




Appearance for Senior Care Organization (SCO):

Cheryl Ellis, M.D., medical director for long-term care, United Healthcare (by 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, Approved in part, Denied in part	Issue:	SCO; PCA Services
Decision Date:	10/17/2022	Hearing Date:	09/29/2022
SCO Rep.:	Dr. Ellis	Appellant Reps.:	
Hearing Location:	Remote	Aid Pending:	No

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 22, 2022, United Healthcare Senior Care Options, 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 existing 27.0 day/evening hours and 14 night hours of PCA assistance, per week, to 13.5 day/evening hours and 14 night hours of PCA assistance, per week (Exhibit 1).¹ The appellant filed this external appeal with the Board of Hearings (BOH) in a timely manner on July 1, 2022 (130 CMR 610.015; Exhibit 2). 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 SCO

United Healthcare ("United" or "the SCO") denied the appellant's level one internal appeal of a modification of a request for PCA services.

¹ 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 United 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 with her daughter, who is also her live-in PCA. United was represented by its medical director for long-term care, who specializes in physical medicine and rehabilitation, who also testified by telephone.

The United medical director testified that the appellant is over age 65, is enrolled in Medicare and Medicaid, and lives in the community with her daughter. She has been enrolled in the United SCO program since 2016. Her medical diagnoses include osteoporosis, osteoarthritis, asthma, intervertebral disc degeneration, bronchiectasis, a history of cerebrovascular accident (stroke), and syncope. The United medical director indicated that on April 11, 2022, an in-person assessment of the appellant was conducted by a United Registered Nurse in the appellant's home. The nurse determined that based on the appellant's observed needs, the appellant requires 13.5 day/evening hours of PCA assistance per week for carrying out her activities of daily living (ADLs) and instrumental activities of daily living (IADLs), and 14 hours of night PCA assistance per week (2 hours per night) (Testimony, Exh. 5). Since at least April, 2020, the date of a virtual assessment of the appellant conducted by United, the appellant had been receiving 27 hours of day/evening PCA assistance per week (Testimony).

The United medical director testified that she reviewed the results of this in-person nurse's assessment ("assessment") on April 25, 2022, which the nurse had submitted as a prior authorization request on behalf of the appellant. The United medical director made a determination to authorize 13.5 hours of day/evening PCA services per week, and 14 nighttime PCA hours per week, for the prior authorization period August 29, 2022 through May 31, 2023 (Testimony, Exhs. 5 & 9).² United mailed a notice to this effect to the appellant on April 27, 2022 (Exh. 8A). The appellant requested a level one internal appeal with United on April 28, 2022 (Exh. 8B). By letter to the appellant dated June 22, 2022, United denied the appellant's level one internal appeal (Exh. 1). The June 22, 2022 denial letter to the appellant states in relevant part:

Our plan made this decision because based on the additional information available, the request does not meet the coverage criteria and further decision should be made following the next nursing assessment. You asked that we cover more hours per week of PCA services. We understand that you want. . . to receive these services that you feel are needed for [your] care.

(Exh. 1)

² All requested nighttime PCA hours were authorized by United.

The appellant appealed the June 22, 2022 denial notice externally to the BOH (Exh. 2).

The United medical director noted that for purposes of this assessment, “extensive assistance” means that the PCA performs 75% of the assistance, while the member performs 25% of the task. In addition, she indicated that “limited assistance” means that the PCA performs 50% of the assistance, and the member performs 50% of the task. She added that United refers to the MassHealth “time for task” guidelines to determine how much time it typically takes a disabled member to complete certain ADLs and IADLs (Testimony).

The United medical director testified that based on the assessment, the appellant was observed to be independent with walking, so United authorized no PCA assistance with this ADL. In the past, the appellant received 140 minutes per week of PCA assistance with walking (Testimony, Exh. 5).

The appellant testified that the United nurse observed her for no more than thirteen minutes on the date of the assessment. The appellant testified that she walked four feet independently from her sofa to the front door of her home on that occasion. However, in general, the appellant’s PCA is present with her when she walks in the home, holding her by one arm. The appellant’s daughter, her PCA, testified that the appellant has L4-L5 disc bulges in her back, scoliosis, and spinal stenosis. Prior to hearing, the appellant submitted to BOH by fax a set of medical records, including the results of an MRI of the appellant’s lumbar spine conducted on August 11, 2022.³ These medical records corroborate the additional medical diagnoses about which the appellant’s daughter testified (Exh. 6).

The appellant’s daughter/PCA testified that the appellant has severe back pain and an unsteady gait. She has had some falls. She added that she assists the appellant to ascend and descend the stairs in the home; the appellant’s bedroom is on the second floor, and the living room and kitchen are located on the first floor. There is one bathroom on each floor. Sometimes the appellant’s daughter brings the appellant her meals in her bedroom because of the appellant’s back pain, so the appellant will not have to ascend and descend the stairs. When the appellant walks, the appellant’s daughter holds the appellant’s arm and sometimes holds her opposite hand as well. The appellant’s daughter testified that although she has not timed it, she typically spends about three hours per day assisting the appellant to walk, including both in the home and in the community (Testimony).

Next, the United medical director testified that no PCA assistance time was authorized for the appellant’s transfers, as the appellant was observed rising from the sofa independently at the assessment, without the use of durable medical equipment (DME). Per the assessment completed by the nurse in April, 2022, the appellant also told the nurse she is able to arise from a bed or chair independently, without using DME. Previously, based on the results of the April, 2020 virtual assessment of the appellant, United had authorized 126 minutes per week of PCA assistance with the appellant’s in-home transfers, including assistance with getting into and out of bed, and assistance transferring from her bed to a chair (Exh. 5, Exh. 12).

³ These medical records were evidently not sent to United.

The appellant's daughter/PCA indicated, in a post-hearing e-mail to the hearing officer, that she spends approximately 15 minutes per day (105 minutes per week) assisting the appellant with her in-home transfers (Exh. 13).

The United medical director testified that the assessment reflected that the appellant needs assistance with lower body bathing, and not upper body bathing, in the amount of 80 minutes per week, days and evenings. Also, United authorized 70 minutes per week of PCA assistance with the appellant's transfers onto and off a shower chair. United authorized a total of 150 minutes per week of day/evening PCA assistance with showering/bathing (including transfers), or approximately 21 minutes per day. The written assessment completed by the United nurse states, "[Appellant] reports she is independent to wash arms, chest, abdomen, peri area. [Appellant] requires worker assistance to wash upper/lower legs due to back pain, unable to bend at waist. [Appellant] can lift legs halfway, worker will steady legs as worker washes legs" (Exh. 5, pp. 348-349).

The appellant's daughter/PCA testified that the appellant has two broken wrists, and therefore is unable to wash her upper body. Medical records of the appellant reflect that she has a "closed fracture of part of radius with ulna" (Exh. 6). The appellant's daughter/PCA assists her on and off the shower chair. The appellant prefers to wash her own perineal area. The appellant's daughter/PCA stated that she (the appellant's daughter) washes the appellant's hair, washes most of her upper and lower body, and dries her off. She stated that the appellant also likes to take a bath sometimes, and to soak in the bathtub. The appellant's daughter/PCA stated that she assists the appellant for approximately 25 minutes per day with bathing/showering (Testimony).

Next, the United medical director testified that the SCO authorized 45 minutes per week of day/evening PCA assistance with the appellant's grooming, including washing and drying her hair, combing her hair, brushing her teeth and trimming her nails. This is equivalent to about 6½ minutes per day of PCA assistance with these activities. The United medical director added that the assessment by the nurse reflected that the appellant was a "limited assist" with grooming activities, which means that the appellant could perform 50% of the tasks on her own (Testimony, Exh. 5).

The appellant's daughter/PCA testified that the appellant was asked by the United nurse to lift her arms above her head at the April, 2022 assessment. The appellant's daughter/PCA testified that on that occasion, the appellant had just taken Advil and had had Voltaren gel applied to her shoulders, so she was able to lift her arms. After the nurse left, the appellant was in extreme pain, according to the appellant's daughter/PCA (Testimony).

The appellant testified that she cannot lift her left arm at all.⁴ She stated that she can brush her teeth on her own. The appellant testified that she cannot wash her face, but she can dry it. Her daughter washes and dries her hair, and styles it. She stated that she has rheumatoid arthritis, but she can raise her right arm in a limited manner (Testimony).

⁴ Medical records of the appellant submitted following the hearing reflect that the appellant was diagnosed in May, 2022 with a traumatic tear of the left rotator cuff (Exh. 10). This was after the April, 2022 in-person assessment was conducted.

The appellant's daughter/PCA stated that she spends about sixty minutes per day assisting the appellant with all aspects of her grooming (Testimony).

With regard to the appellant's dressing and undressing, based on the April, 2022 assessment, United authorized 35 minutes of day/evening PCA assistance per week to dress and undress her upper body, and 35 minutes of day/evening PCA assistance per week to dress and undress her lower body. This is equivalent to 10 minutes per day of PCA assistance for dressing/undressing. The appellant agreed that this is acceptable to her (Testimony).

Based on the April, 2022 assessment, United deemed the appellant to be independent with eating, and therefore authorized no PCA assistance time for this ADL. The appellant agreed that this is acceptable to her (Exh. 5, Testimony).

Next, the United medical director testified that the United nurse requested 60 minutes per week of PCA assistance for the appellant's day/evening toileting, which the SCO authorized. This is approximately 8½ minutes per day, and is meant to include time spent by the PCA assisting the appellant with transfers on and off the toilet, hygiene, and clothing management. The United medical director stated that the nurse documented that the appellant has an unsteady gait when ambulating to and from the toilet (Testimony, Exh. 5, p. 351). In addition, the appellant is documented to be continent of bowel and bladder (Exh. 5, pp. 351-352).⁵

The appellant's daughter/PCA stated that the appellant uses the toilet approximately four times between 6 am and noon, and approximately six times between noon and midnight. The appellant's daughter/PCA helps the appellant each time by pulling down her pants, wiping the appellant, and holding onto the appellant when she stands up from the toilet if she is dizzy. Although the appellant is right-handed, she used to use her left hand to wipe after urinating or having a bowel movement (Testimony).

The appellant's daughter/PCA stated that although she has never timed it, she believes she provides about 5 minutes of hands-on assistance to the appellant for each occurrence of toileting (Testimony).

For the IADL of prefilling a medication box with the appellant's prescribed medications weekly, United authorized 20 minutes per week for the PCA to perform this task. The appellant agreed that this is acceptable to her.

For meal preparation and cleanup, another IADL, United authorized 245 minutes per week of day/evening assistance by the PCA. For breakfast preparation and cleanup, United authorized 35 minutes a week, or 5 minutes daily; for lunch preparation and cleanup, United authorized 105 minutes per week; and for dinner preparation and cleanup, United authorized 105 minutes per week (15 minutes daily for lunch and dinner, respectively). The medical director testified that this is the same amount of PCA assistance that was authorized in the past for meal preparation and

⁵ However, medical records of the appellant faxed to the BOH on September 15, 2022 reflect that as of that date, the appellant was incontinent of feces (Exh. 6).

cleanup for the appellant (Testimony, Exh. 5, pp. 353-354).

The appellant's daughter/PCA stated that for the appellant's breakfast, she prepares gluten-free pancakes, chopped walnuts and fruit, scrambled eggs at times, and smoothies at times. She noted that the appellant has gastritis and cannot eat all foods.⁶ She testified that the appellant suffered a stroke in 2017, and at that time, the appellant's doctor advised her to change her diet to a low-cholesterol diet.⁷ She has also lost weight after contracting Covid-19 twice. The appellant's daughter/PCA stated that the appellant does not have a gluten allergy, but may have gluten-sensitivity. She added that low-gluten foods can reduce the appellant's inflammation, improving her rheumatoid arthritis symptoms (Testimony).⁸

The appellant's daughter/PCA stated that for lunch and dinner, she prepares chicken, rice, vegetables, and other foods that are easy for the appellant to swallow. She stated that sometimes she and the appellant sometimes share a dinner meal. She stated that 15 minutes of PCA assistance per day for lunch preparation and cleanup, and for dinner preparation and cleanup, respectively, is insufficient (Testimony).

The United medical director stated, in view of the appellant's daughter/PCA's testimony, United would add 20 minutes per week of day/evening PCA assistance, for meal preparation and cleanup for each of the appellant's meals. This would equal 305 minutes per week of day/evening PCA assistance with meal preparation and cleanup. The appellant's daughter/PCA stated that it takes 45 minutes for her to prepare each of the appellant's meals every day, and to clean up after each one (including washing and drying dishes) (Testimony).

Next, the United medical director testified that for the IADL of doing the appellant's laundry, United authorized 60 minutes of PCA assistance per week. The appellant agreed that this amount of PCA assistance is acceptable to her.

The United medical director next testified about PCA assistance with housekeeping, an IADL, for which United authorized 90 minutes of PCA assistance per week. The appellant's daughter/PCA stated that she vacuums the appellant's apartment every day due to the appellant's allergies, and she frequently cleans the bathrooms. She testified that she spends approximately 20 to 30 minutes per day on the appellant's housekeeping (Testimony).

The United medical director next testified about PCA assistance with shopping, for which United authorized 35 minutes of PCA assistance per week, or 5 minutes per day. The appellant's daughter/PCA stated that she goes to the grocery store about 4 times a week for the appellant. She added that she and the appellant do not always have enough money to buy all the appellant's groceries at one time, and she looks for deals in the grocery stores. The United medical director

⁶ The appellant's diagnosis of gastritis is confirmed by medical records of the appellant faxed to the BOH by the appellant on September 15, 2022 (Exh. 6).

⁷ Per Exh. 6, one of the appellant's diagnoses is hyperlipidemia.

⁸ The appellant's diagnosis of rheumatoid arthritis is also confirmed by medical records faxed to the BOH on September 15, 2022 (Exh. 6).

stated that shopping includes driving time to and from the grocery store, and time spent waiting in line (Testimony, Exh. 5, p. 355).

The appellant's daughter/PCA testified that she spends approximately 90 minutes four times a week on the appellant's shopping (Testimony).

For transportation to and from the appellant's medical appointments (including assistance with the appellant's transfers into and out of a vehicle), United authorized 35 minutes per week of PCA assistance. The medical director testified that the appellant has 12 medical appointments per year, and assumed, when allotting time, that each medical appointment takes about two hours in length. The time authorized by United includes travel time to and from each appointment.⁹ The appellant's daughter/PCA testified that the appellant has many more than 12 medical appointments per year. The appellant testified that she also attends physical therapy for her shoulder injury, and for her back as well. These are in different clinical settings. The United medical director stated that in view of the appellant's testimony, United would authorize an additional 35 minutes of day/evening PCA assistance per week with transportation to and from medical appointments, or 70 minutes per week total. The appellant declined this offer (Testimony, Exh. 5, p. 356).¹⁰

The United medical director asserted that she believes that the appellant's needs have changed since April, 2022, and opined that the appellant needs a new in-person assessment by United nurse (Testimony).¹¹

At the close of the hearing, the hearing officer agreed to keep the record of the appeal open for seven days, or until October 6, 2022, for the appellant to supply a list of the medical appointments she attended in the month of September, 2022, including the name and the location of each clinician, and the location of his/her office.

On October 3, 2022, the appellant sent the hearing officer and the United medical director, by fax, a list of additional medical records of the appellant, although these were not requested by the hearing officer (Exh. 10). These records include a signed prescription for physical therapy for the appellant, dated August 29, 2022, for lumbar stenosis/disc herniation (Exh. 10A).

On October 4, 2022, the appellant sent the hearing officer and the United medical director, by fax, a list of the medical appointments she attended in September, 2022, as follows:

<u>Date</u>	<u>Clinician</u>	<u>Location</u>
September 7, 2022	K.D.J., physical therapist	
September 8, 2022	Dr. Dubey, primary care	

⁹ The medical director did not offer testimony about how mileage to and from each medical appointment is calculated.

¹⁰ The hearing officer inquired of the appellant if she has ever used a MassHealth prescription for transportation (PT-1) to get to and from her medical appointments. She stated that she had in the past, but found this transportation to be unreliable.

¹¹ The United medical director testified that she believes the appellant was granted "aid pending" during the pendency of this appeal. However, this testimony is not supported by the record.

September 14, 2022	K.D.J., physical therapist
September 15, 2022	Dr. Axelrod, rheumatologist
September 19, 2022	Dr. Cassidy, orthopedic surgeon
September 22, 2022	Dr. Song, ophthalmologist
September 27, 2022	Dr. Shapiro, physical therapist
September 28, 2022	Dr. Shapiro, physical therapist
September 30, 2022	Dr. Grossman, pulmonologist



(Exh. 11)

In addition, documentation submitted by the appellant's daughter/PCA reflects that the appellant sees other clinicians in [REDACTED] and [REDACTED] as well (Exh. 11B).

On October 7, 2022, the hearing officer briefly reopened the record of this appeal by e-mail to the parties. The hearing officer sought additional and clarifying information about the United authorization of PCA day/evening assistance time with the appellant's in-home transfers, and for clarification of testimony by the appellant's daughter/PCA about how many minutes she assists the appellant daily with the latter's in-home transfers (Exhs. 12 and 13).¹² Responses were received from each party, and the hearing officer closed the hearing record on October 7, 2022.

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 daughter/PCA, and has been enrolled in United's SCO program since 2016 (Testimony, Exh. 5).
2. Her medical diagnoses include osteoporosis, osteoarthritis, asthma, intervertebral disc degeneration, bronchiectasis, a history of stroke, hyperlipidemia, syncope, L4-L5 disc bulges in her back, scoliosis, lumbar stenosis, disc herniation, rheumatoid arthritis, mild levoscoliosis, gastritis and a closed fracture of part of radius with ulna (Testimony, Exhs. 5 & 6).
3. On April 11, 2022, an in-person assessment of the appellant was conducted by a United Registered Nurse in the appellant's home (Testimony, Exh. 5).
4. The nurse determined that based on the appellant's observed needs, the appellant requires 13.5 day/evening hours of PCA assistance per week for carrying out her activities of daily living (ADLs) and instrumental activities of daily living (IADLs), and 14 hours of night PCA assistance per week (2 hours per night) (Testimony, Exh. 5).

¹² Pursuant to 130 CMR 610.081, "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. . . ."

5. A United medical director, a physician, reviewed the results of this in-person nurse's assessment ("assessment") on April 25, 2022, which the nurse had submitted as a prior authorization request on behalf of the appellant (Testimony).
6. The United medical director made a determination to authorize 13.5 hours of day/evening PCA services per week, and 14 nighttime PCA hours per week, for the prior authorization period August 29, 2022 through May 31, 2023 (Testimony, Exhs. 5 & 9).
7. In the past, based on the results of a 2020 virtual assessment of the appellant conducted by United, the appellant had been receiving 27 hours of day/evening PCA assistance per week (Testimony).
8. United mailed a notice apprising the appellant it was authorizing 13.5 hours of day/evening PCA services per week, and 14 nighttime PCA hours per week, on April 27, 2022 (Exh. 8A).
9. The appellant requested a level one internal appeal of this decision with United on April 28, 2022 (Exh. 8B).
10. After reviewing her level one internal appeal, United denied the appeal, by letter to the appellant dated June 22, 2022; the denial letter to the appellant states in relevant part: "Our plan made this decision because based on the additional information available, the request does not meet the coverage criteria and further decision should be made following the next nursing assessment. You asked that we cover more hours per week of PCA services. We understand that you want. . . to receive these services that you feel are needed for [your] care" (Exh. 1).
11. The appellant filed a timely external appeal with the BOH (Exh. 2).
12. Based on the in-person 2022 assessment, the appellant was observed to be independent with walking, so United authorized no PCA assistance with this ADL. In the past, the appellant received 140 minutes per week of PCA assistance with walking (Testimony, Exh. 5).
13. The appellant has severe back pain and an unsteady gait. She has had some falls (Testimony).
14. The appellant's PCA assists the appellant to ascend and descend the stairs in the home; the appellant's bedroom is on the second floor, and the living room and kitchen are located on the first floor. There is one bathroom on each floor. Sometimes the appellant's daughter brings the appellant her meals in her bedroom because of the appellant's back pain, so the appellant will not have to ascend and descend the stairs. When the appellant walks, the appellant's daughter holds the appellant's arm and sometimes holds her opposite hand as well (Testimony).

15. Although she has not timed it, the appellant's PCA estimated she typically spends about three hours per day assisting the appellant to walk (Testimony).
16. United authorized no PCA assistance time for the appellant's transfers, as the appellant was observed rising from the sofa independently at the in-person assessment, without the use of DME (Testimony, Exh. 5).
17. Previously, based on the results of the 2020 virtual assessment of the appellant, United had authorized 126 minutes per week of PCA assistance with the appellant's in-home transfers, including assistance with getting into and out of bed, and assistance transferring from her bed to a chair (Exh. 5, Exh. 12).
18. The appellant's daughter/PCA indicated that she spends approximately 15 minutes per day (105 minutes per week) assisting the appellant with her in-home transfers (Exh. 13).
19. The in-person assessment reflected that the appellant needs assistance with lower body bathing, and not upper body bathing, in the amount of 80 minutes per week, days and evenings, in addition to 70 minutes per week of PCA assistance with the appellant's transfers onto and off a shower chair. United authorized a total of 150 minutes per week of day/evening PCA assistance with showering/bathing (including transfers), or approximately 21 1/2 minutes per day (Testimony, Exh. 5).
20. The written assessment completed by the United nurse states, "[Appellant] reports she is independent to wash arms, chest, abdomen, peri area. [Appellant] requires worker assistance to wash upper/lower legs due to back pain, unable to bend at waist. [Appellant] can lift legs halfway, worker will steady legs as worker washes legs" (Exh. 5, pp. 348-349).
21. The appellant denied being able to wash her upper body independently due to left arm and hand pain (Testimony).
22. The appellant's daughter/PCA assists her on and off the shower chair. The appellant's daughter/PCA washes the appellant's hair, washes most of her upper and lower body, and dries her off (Testimony).
23. The appellant prefers to wash her own perineal area (Testimony).
24. The appellant likes to soak in a bath sometimes (Testimony).
25. The appellant's daughter/PCA stated that she assists the appellant for approximately 25 minutes per day with bathing/showering (Testimony).
26. United authorized 45 minutes per week of day/evening PCA assistance with the appellant's grooming, including washing and drying her hair, combing her hair, brushing her teeth and trimming her nails. This is equivalent to about 6½ minutes per day of PCA

assistance with these activities (Testimony, Exh. 5).

27. The appellant can brush her teeth on her own, and she cannot wash her face, but can dry it (Testimony).
28. The appellant's daughter/PCA washes and dries the appellant's hair, and styles it (Testimony).
29. The appellant's daughter/PCA estimated that she spends sixty minutes per day assisting the appellant with all aspects of her grooming (Testimony).
30. United authorized 35 minutes of day/evening PCA assistance per week to dress and undress her upper body, and 35 minutes of day/evening PCA assistance per week to dress and undress her lower body. This is equivalent to 10 minutes per day of PCA assistance for dressing/undressing (Testimony, Exh. 5).
31. The appellant accepted the approved time for PCA assistance with dressing and undressing.
32. United deemed the appellant to be independent with eating, and therefore authorized no PCA assistance time for this ADL (Testimony, Exh. 5).
33. The appellant accepted the approved time for PCA assistance with eating.
34. United authorized 60 minutes per week of PCA assistance for the appellant's day/evening toileting, which the SCO authorized. This is approximately 8½ minutes per day, and is meant to include time spent by the PCA assisting the appellant with transfers on and off the toilet, hygiene, and clothing management (Testimony, Exh. 5).
35. The appellant uses the toilet approximately four times between 6 am and noon, and approximately six times between noon and midnight (Testimony).
36. The appellant's daughter/PCA helps the appellant each time by transferring her on and off the toilet, pulling down her pants, wiping the appellant, and holding onto the appellant when she stands up from the toilet if she is dizzy (Testimony).
37. Although she has never timed it, the appellant's daughter/PCA estimated that she provides about 5 minutes of hands-on assistance to the appellant for each occurrence of toileting (Testimony).
38. For the IADL of prefilling a medication box with the appellant's prescribed medications weekly, United authorized 20 minutes per week for the PCA to perform this task (Testimony, Exh. 5).
39. The appellant agreed to this authorization of PCA time.

40. For the IADL of doing the appellant's laundry, United authorized 60 minutes of PCA assistance per week (Testimony, Exh. 5).
41. The appellant agreed that this amount of PCA assistance is acceptable to her.
42. For meal preparation and cleanup, another IADL, United authorized 245 minutes per week of day/evening assistance by the PCA. For breakfast preparation and cleanup, United authorized 35 minutes a week, or 5 minutes daily; for lunch preparation and cleanup, United authorized 105 minutes per week; and for dinner preparation and cleanup, United authorized 105 minutes per week (15 minutes daily for lunch and dinner, respectively) (Testimony, Exh. 5).
43. this is the same amount of PCA assistance that was authorized in the past for meal preparation and cleanup for the appellant (Testimony, Exh. 5, pp. 353-354).
44. The appellant's daughter/PCA prepares a low-cholesterol, low-gluten diet for the appellant (Testimony).
45. Occasionally the appellant and her daughter/PCA share the same dinner meal (Testimony).
46. The appellant's daughter/PCA stated that it takes 45 minutes for her to prepare each of the appellant's meals every day, and to clean up after each one (including washing and drying dishes) (Testimony).
47. United authorized 90 minutes of PCA assistance per week for the appellant's housekeeping (Testimony, Exh. 5).
48. The appellant's daughter/PCA spends approximately 20 to 30 minutes per day on the appellant's housekeeping, including vacuuming and cleaning bathrooms (Testimony).
49. United authorized 35 minutes of PCA assistance per week, or 5 minutes per day, for the appellant's shopping, which is meant to include driving time to and from the grocery store and waiting in line (Testimony, Exh. 5).
50. The appellant's daughter/PCA goes to the grocery store about 4 times a week for the appellant. She does not always have enough money to buy all the appellant's groceries at one time, and she looks for deals in the grocery stores (Testimony).
51. The appellant's daughter/PCA estimated that she spends approximately 90 minutes four times a week on the appellant's shopping (Testimony).
52. For transportation to and from the appellant's medical appointments (including assistance with the appellant's transfers into and out of a vehicle and driving time), United authorized 35 minutes per week of PCA assistance (Testimony, Exh. 5).

53. United, when making an authorization of PCA time for transportation to and from medical appointments, assumed that the appellant attends 12 medical appointments per year (Testimony, Exh. 5).
54. In fact, the appellant attends many more medical appointments than twelve per year; evidence submitted by the appellant following the close of the hearing reflects that the appellant had nine medical appointments in the month of September, 2022, including physical therapy appointments, with doctors located in [REDACTED] and [REDACTED] (Exh. 11).

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)

Here, 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, United is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth SCOs, above, United 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 ("ADLs") 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 ("IADLs") 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.

PCA Assistance with Dressing/Undressing, Eating, Laundry, and Pre-Filling Medication Box

For PCA assistance with the ADLs of dressing/undressing, and eating, United authorized the following:

- A. Undressing/Dressing -- 70 minutes per week
- B. Eating – 0 minutes per week

For PCA assistance with the IADLs of laundry and pre-filling a weekly medication box, United authorized the following:

- A. Laundry – 60 minutes per week
- B. Pre-filling medication box – 20 minutes per week

The appellant agreed with these allocations of PCA time.

Therefore, these portions of the appeal are DISMISSED.

PCA Assistance with Walking

Based on the 2022 in-person assessment by United's nurse, the appellant was deemed independent with walking. Thus, no PCA assistance time was allocated for this ADL.

The evidence shows that the appellant has had falls, has lumbar stenosis, L4-L5 disc herniation, rheumatoid arthritis, and mild levoscoliosis. In the past, United authorized 140 minutes per week of day/evening PCA assistance with the appellant's walking.

The appellant's PCA testified that she spends approximately three hours per day assisting the appellant to walk, although she acknowledged she had not actually timed it. Three hours per day of assisting the appellant to walk is excessive.

I conclude that 20 minutes per day of PCA day/evening assistance (140 minutes per week) with walking is medically necessary for the appellant, which aligns with the amount of assistance the appellant had in the previous prior authorization period for this ADL.

This portion of the appeal is therefore APPROVED IN PART.

PCA Assistance with Transfers

Based on the 2022 in-person assessment by United's nurse, the appellant was deemed independent with transfers. Thus, no PCA assistance time was allocated for this ADL.

The appellant has a history of falls, syncope and an unsteady gait. As noted above, she has multiple diagnoses that cause her back pain. In the past, the appellant was authorized to receive 126 minutes per week of day/evening PCA assistance with in-home transfers, or 18 minutes per day.

The appellant's PCA offered credible evidence that she assists the appellant with her in-home transfers for 15 minutes per day.

I conclude that that 15 minutes per day of PCA day/evening assistance (105 minutes per week) with transfers is medically necessary for the appellant.

This portion of the appeal is APPROVED IN PART.

PCA Assistance with Bathing/Showering

Based on the 2022 in-person assessment, United determined that the appellant needs assistance with bathing/showering, including transfers onto/off a shower chair, in the amount of 21 ½ minutes per day, or 150 minutes per week.

The evidence shows that the appellant needs assistance with washing her upper and lower body. However, she washes certain parts of her lower body on her own. The appellant likes to soak in a bath sometimes, but this does not require hands-on physical assistance by her PCA.

The appellant's PCA stated that she spends approximately 25 minutes per day assisting the appellant with bathing/showering.

I conclude that 21 1/2 minutes per day of day/evening PCA for bathing/showering is medically necessary for the appellant. To the extent that the appellant seeks more than this amount of PCA assistance per day, this portion of the appeal is DENIED.

PCA Assistance with Grooming

Based on the 2022 in-person assessment, the SCO authorized 45 minutes per week of day/evening PCA assistance with the appellant's grooming, including washing and drying her hair, combing

her hair, brushing her teeth and trimming her nails. This is equivalent to about 6½ minutes per day of PCA assistance with these activities.

The appellant can brush her teeth and dry her face after it is washed by her PCA. Her PCA washes and dries her hair, and styles it. The appellant's PCA estimated that she spends about 60 minutes per day assisting the appellant with her grooming. This figure is excessive.

I conclude that 20 minutes of PCA day/evening assistance every day with the appellant's grooming tasks is medically necessary for the appellant, or 140 minutes per week.

This portion of the appeal is APPROVED IN PART.

PCA Assistance with Toileting

United authorized 60 minutes per week of day/evening PCA assistance with the appellant's toileting. This time is meant to include transfers to and from the toilet, clothing management, and hygiene. This authorization of time is equivalent to 8 ½ minutes per day.

The appellant's PCA testified the appellant uses the toilet ten times a day between 6 am and midnight. She estimated that she spends 5 minutes helping the appellant each time she uses the toilet. This amount of time is excessive.

I conclude that 20 minutes per day of PCA assistance is medical necessary for the appellant for help with toileting, or 140 minutes per week.

This portion of the appeal is APPROVED IN PART.

PCA Assistance with Housekeeping

United authorized 90 minutes of day/evening PCA assistance each week with the appellant's housekeeping.

The appellant's PCA stated she vacuums every day. The home has two bathrooms. The appellant's PCA asserted that she spends 20 minutes per day on the appellant's housekeeping. This figure is excessive.

I conclude that the 90 minutes of PCA assistance per week with housekeeping is medically necessary for the appellant.

This portion of the appeal is therefore DENIED.

PCA Assistance with Shopping

United authorized 35 minutes of PCA assistance per week, or 5 minutes per day, with shopping.

The appellant's PCA testified that she goes to the grocery store about 4 times a week for the appellant. She noted that she and the appellant do not always have enough money to buy all the appellant's groceries at one time, and she looks for deals in the grocery stores. She spends approximately 90 minutes four times a week on the appellant's shopping.

This amount of time is excessive, and the appellant's shopping should be able to be completed in one or two days per week.

I conclude that 90 minutes per week of PCA assistance with shopping is medically necessary for the appellant.

This portion of the appeal is APPROVED IN PART.

PCA Assistance with Meal Preparation and Cleanup

For meal preparation and cleanup, another IADL, United authorized 245 minutes per week of day/evening assistance by the PCA. This equates to 5 minutes a day for breakfast, and 15 minutes per day for both lunch and dinner, respectively.

The appellant's PCA credibly testified that the appellant has some special dietary needs, due to her gastritis, hyperlipidemia, a history of stroke, and rheumatoid arthritis. She noted that sometimes she and the appellant share the same dinner meal. She asserted that it takes her 45 minutes to prepare each of the appellant's meals every day, and to clean up after each one (including washing and drying dishes). This is equal to 135 minutes per day. This amount of time is excessive.

At hearing, following the appellant's testimony, United offered additional PCA time for this IADL; the total amount of time it offered was 305 minutes per week, or 43 ½ minutes per day for the PCA to prepare and clean up after all of the appellant's meals.

I conclude that 305 minutes per week of PCA assistance with the appellant's meal preparation and cleanup is medically necessary for the appellant.

This portion of the appeal is APPROVED IN PART.

PCA Assistance with Transportation to/from medical appointments

United authorized 35 minutes of PCA assistance per week for transportation to and from the appellant's medical appointments, including time for transfers, and driving time. This amount of time was premised on the appellant having 12 medical appointments per year.

Following the hearing, during a record-open period, the appellant supplied credible evidence that she attended 9 medical and/or physical therapy appointments in the month of September, 2022 alone. The appellant also supplied evidence that she sees clinicians in [REDACTED] among other cities.

It is clear that a new evaluation of the appellant's need for PCA assistance to and from all her medical appointments is needed, taking into account that the appellant has many more appointments than 12 per year, and also specifically addressing the mileage to and from each provider's office.

Nine appointments per month is equal to 108 per year. In view of this information, I conclude that it is medically necessary for the appellant to receive 90 minutes per week (a weekly average over the entire prior authorization period of August 29, 2022 through May 31, 2023) of PCA assistance with transportation to and from medical appointments.

This portion of the appeal is APPROVED IN PART.

Order for SCO

Rescind notices of April 27, 2022 and June 22, 2022. Send notice to the appellant authorizing her for 23.5 hours of day/evening PCA assistance per week, and 14 nighttime hours of PCA assistance per week, for the PA period August 29, 2022 through May 31, 2023.

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 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Cheryl Ellis, M.D., Medical Director for Long-Term Care, United Healthcare, 950 Winter Street, Suite 3800, Waltham, MA 02451