

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part;
Remanded in part

Appeal Number: 2206733

Decision Date: 11/9/2022

Hearing Date: 10/13/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:

Pro se

**Appearance for United Health Care
Senior Care Organization:**

Dr. Cheryl Ellis, Medical Director



*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:	Denied in part; Remanded in part	Issue:	SCO – Personal Care Services
Decision Date:	11/9/2022	Hearing Date:	10/13/2022
United Health Care SCO's Rep.:	Dr. Cheryl Ellis, Medical Director	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center Room	Aid Pending:	Yes

Authority

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

Jurisdiction

The appellant, a member of United Healthcare Senior Care Options ("United"), a MassHealth Senior Care Organization ("SCO"), received a notice from United dated 08/31/2022 reducing the appellant's request for personal care services ("PCS") (Exhibit 1). The appellant filed this appeal with the Board of Hearings in a timely manner on 09/08/2022¹ and her benefits are protected at 25.0 hours per week pending the outcome of this appeal (130 CMR 610.015(B), 610.036; Exhibit 2). Members enrolled in an SCO have a right to request a fair hearing for a decision to deny or provide limited authorization of a requested service, provided the member has exhausted all remedies available through the SCO's internal appeals process (130 CMR 610.032(B)(2)). The

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

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

appellant exhausted United's internal appeals process.

Action Taken by MassHealth

United reduced the appellant's request for PCS from the requested 25 hours per week to 9.0 hours per week.

Issue

Was United correct in modifying the appellant's request for PCS from the requested 25.0 hours per week to 9.0 hours per week?

Summary of Evidence

United's medical director, a physician, referenced a packet that was submitted prior to the fair hearing (Exhibit 4). She testified telephonically that this case involves a United member, who has been enrolled in United's SCO since December 2016. United's SCO manages the appellant's health care needs.

The physician testified that the appellant has diagnoses of hypertension paroxysmal atrial fibrillation, spondylosis without myelopathy or radiculopathy lumbar region, polyosteoarthritis, insomnia, hyperlipidemia, atherosclerosis of coronary artery bypass grafts without angina pectoris, and psoriasis. She lives alone and her adult son is involved in her case. The appellant was last approved for 25.0 hours per week of personal care services but has not been evaluated in person since 2018. The current determination is based on an in-person evaluation by a registered nurse ("RN") on 07/25/2022. Based on the evaluation, United decreased the appellant's PCS from 25.0 hours per week to 9.0 hours per week; however, her services are protected at 25.0 hours per week pending this appeal.

United reviewed seven areas of assistance with activities of daily living (ADL): mobility/ambulation; transfers, bathing, personal hygiene, dressing, eating, and toileting. The appellant was approved for 7.5 hours per week for assistance with instrumental activities of daily living (IADL), that was the issue of a separate notice from United, and those IADL hours are not at issue in this appeal.

Mobility

In 2018, the appellant was approved for 420 minutes per week (60 minutes per day) for assistance with ambulation. During the 07/25/2022 evaluation, the RN observed the appellant able to ambulate independently in her home. As a result, no time was approved for mobility.

The appellant testified that the RN who observed her was “new” and the appellant stated that her condition has not improved. She still requires 25.0 hours per week of PCS.

Transfers

In 2018 United approved the appellant for 35 minutes per week (5 minutes per day) for assistance with transfers in the home. At the 07/25/2022 evaluation, the RN observed the appellant to be independent with transfers from bed to living room, kitchen, etc.

The appellant testified that her personal care assistant comes to her home about 6:30 a.m. and stays for about 2 hours. She returns in the evening for about 4 additional hours. When she comes in the morning, she assists the appellant to take a shower, get dressed and to take her medications. She then prepares breakfast because the appellant is unable to lift anything more than one pound. The personal care assistant helps the appellant with her hearing aid, and to put in her eye drops, then cooks food and goes shopping for the appellant. When she returns in the evening, she assists the appellant to undress, administer eye drops, take medications and wash her. In addition, she assists the appellant by cleaning the bathroom and kitchen.

Bathing

In 2018, United approved the appellant for 430 minutes per week for assistance (60 minutes per day). Based on the 07/25/2022 evaluation, United decreased the amount of time for assistance with bathing to 290 minutes per week (42 minutes per day).

The appellant testified that she has a “problem shoulder” and long hair. She needs at least 20 minutes per day for assistance with bathing.

Personal Hygiene

In 2018, United approved the appellant for 455 minutes per week (65 minutes per day) for assistance with grooming/personal hygiene. Based on the 07/25/2022 evaluation, United decreased the amount of assistance to 105 minutes per week (15 minutes per day).

The appellant testified that she needs assistance with grooming and is unsteady on her feet. She uses a cane because her “balance is terrible.” She does not shave and can brush her own teeth and apply deodorant. The appellant has had six shots in her back and also shots in her shoulders and is not able to stretch.

Dressing

In 2018, United approved the appellant for 140 minutes per week (20 minutes per day) for assistance with dressing. The RN evaluated the appellant on 07/25/2022 and

determined that the appellant needs 100 minutes per week (14 minutes per day) for assistance with dressing.

The appellant testified that she had difficulty stretching and needs at least 10 minutes per day for assistance with dressing. She also stated that she takes medication for blood pressure that makes it difficult to stand up quickly.

Eating

In 2018, United determined that the appellant was independent with eating and approved no time for assistance. In 2022, the RN determined that the appellant continues to need no assistance with eating.

Toileting

In 2018, United determined that the appellant was independent with toileting and approved no time for assistance. In 2022, the RN determined that the appellant continues to need no assistance with toileting.

The appellant responded that she now uses incontinence pad and needs assistance changing them 3 times per day.

United's Medical Director replied that United would conduct a new evaluation of the appellant's needs as they relate to assistance with toileting, based on the new information that the appellant now requires incontinence pads.

Findings of Fact

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

1. The appellant is a woman who lives alone independently (Testimony; Exhibit 4).
2. The appellant is a MassHealth member who is enrolled in United's SCO since 2016 (Testimony).
3. The appellant has diagnoses of hypertension paroxysmal atrial fibrillation, spondylosis without myelopathy or radiculopathy lumbar region, polyosteoarthritis, insomnia, hyperlipidemia, atherosclerosis of coronary artery bypass grafts without angina pectoris, and psoriasis (Testimony).
4. In 2018, United approved the appellant for 25.0 hours per week of PCS assistance.
5. Between 2018 and 2022, no in-person evaluations were conducted due to Covid-19.

6. In 2018 the appellant was approved for the following PSC time for her ADLs:

Mobility	420 minutes per week (60 minutes per day)
Transfers	35 minutes per week (5 minutes per day)
Bathing	430 minutes per week for assistance (60 minutes per day)
Personal Hygiene/Grooming	455 minutes per week (65 minutes per day)
Dressing	140 minutes per week (20 minutes per day)
Eating	No time for assistance
Toileting	No time for assistance

7. On 07/25/2022, an RN conducted an in-person evaluation of the appellant's needs for PCS assistance.
8. On 07/25/2022, United determined that the appellant needs 9.0 hours per week of PSC assistance, as follows:

Mobility	No time approved
Transfers	No time approved
Bathing	290 minutes per week (42 minutes per day)
Personal Hygiene/Grooming	105 minutes per week (15 minutes per day)
Dressing	100 minutes per week (14 minutes per day)
Eating	No time for assistance
Toileting	No time for assistance

9. Not at issue in this appeal is United's approval of 7.5 hours provided to the appellant for assistance with IADLs.
10. The appellant exhausted United's internal appeal processes (Testimony; Exhibits 2 and 5).
11. The appellant testified she needs 20 minutes per day of assistance with bathing.
12. The appellant testified she needs 10 minutes per day of assistance with dressing.
13. The appellant testified that she now requires the use of incontinence pads and that she needs assistance changing them three times per day.

Analysis and Conclusions of Law

The regulatory definition of medical necessity is set forth at 130 CMR 450.204. 130 CMR 450.204(A) and (B) state as follows:

The MassHealth agency will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "medically necessary" if:

(1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and

(2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

Regulations at 130 CMR 508.008 address Senior Care Organizations as follows:

(A) Enrollment Requirements. In order 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.

(B) Selection Procedure. The MassHealth agency will notify members of the availability of a senior care organization (SCO) in their service area and of the procedures for enrollment. An eligible member may voluntarily enroll in any SCO in the member's service area. A service area is the specific geographical area of Massachusetts in which a SCO agrees to serve its contract with the

MassHealth agency and the Centers for Medicare & Medicaid Services. Service area listings may be obtained from the MassHealth agency or its designee. The list of senior care organizations (SCOs) that the MassHealth agency will make available to members will include those SCOs that contract with the MassHealth agency and provide services within the member's service area.

(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.

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

The appellant, a MassHealth member, is enrolled in United's SCO. In 2018 based upon an in-person assessment, the appellant was approved for 25.0 hours per week of (PCS) assistance with ADLs. Until 2022, no other in-person assessments were conducted due to Covid-19. On 07/25/2022, an RN conducted an in-person, in-home assessment of her PCS needs. The RN determined that the appellant requires 9.00 hours per week of assistance. The appellant made no substantive challenge to United's assessment concerning the areas of mobility (no time approved), transfers (no time approved), personal hygiene (105 minutes per week), eating (no time approved), or eating (no time approved). As a result, United's approval of time in these areas are upheld. This portion of the appeal is denied.

With regard to the areas of bathing and dressing, the appellant testified that the time approved by United (bathing – 42 minutes per day; dressing – 14 minutes per day) met her needs. Accordingly, this portion of the appeal is denied.

Regarding toileting, United determined that the appellant requires no time for assistance with toileting. At hearing, the appellant testified that she now requires the use of incontinence pads and needs assistance changing them three times per day. United agreed to re-evaluate the appellant's needs for assistance in the area. Accordingly, this portion of the appeal is remanded to United for a new evaluation.

For the reasons set forth above, this appeal is denied in part; remanded in part.

Order for United SCO

Remove aid pending. Re-evaluate the appellant for her needs for assistance with toileting. Inform the appellant of results of the re-evaluation and include appeal rights.

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, Division of Medical Assistance, at the address on the first page of this decision.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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