

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]
[REDACTED]
[REDACTED]

Appeal Decision: Approved in Part;
 Denied in Part

Appeal Number: 2208265

Decision Date: 1/19/2023

Hearing Date: 12/08/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:

[REDACTED]

Appearances for UnitedHealthcare:

Dr. Cheryl Ellis, Medical Director



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

APPEAL DECISION

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|--------------------------|-------------------------------------|---------------------------|---|
| Appeal Decision: | Approved in part; Denied in part | Issue: | Prior Authorization for PCA Services |
| Decision Date: | 1/19/2023 | Hearing Date: | 03/11/2021 |
| UHC's Reps.: | Dr. Cheryl Ellis | Appellant's Reps.: | |
| Hearing Location: | Board of Hearings (Remote) | Aid Pending: | No |

Authority

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

Jurisdiction

Through a notice dated September 15, 2022, UnitedHealthcare, a Senior Care Options (SCO) managed care program that contracts with MassHealth, notified the appellant that it had denied her Level 1 Appeal regarding her request for additional personal care attendant (PCA) hours (Exhibit 1). On November 4, 2022, the appellant filed a timely appeal with the Board of Hearings (130 CMR 610.015(B)). On November 7, 2022, the Board of Hearings dismissed the appeal because the appellant did not include a copy of the notice that prompted the appeal (Exhibit 2). On November 14, 2022, the appellant submitted a copy of the relevant notice (Exhibit 3). The dismissal was vacated, and hearing was scheduled for December 8, 2022 (Exhibit 4). Denial or modification of a request for services is a valid basis for appeal (130 CMR 610.032).

Action Taken by UnitedHealthcare SCO

UnitedHealthcare SCO denied the appellant's request for 17.5 daytime and 14 nighttime PCA hours per week, instead approving 11 daytime hours per week, and 0 nighttime hours per week. It then then denied her Level 1 Appeal of that initial decision.

Issue

The appeal issue is whether the evidence supports UnitedHealthcare's approval of 11 hours of daytime and 0 hours of nighttime PCA services per week.

Summary of Evidence

The UnitedHealthcare (UHC) medical director, Dr. Cheryl Ellis, appeared at hearing by phone and offered the following factual background through testimony and documentary evidence: The appellant joined the UHC SCO in 2016. The appellant is a female in her late ■■■ with diagnoses that include major depressive disorder, spinal stenosis and radiculopathy of the lumbar region, osteoarthritis, hypertension, bilateral cataracts, diabetes, and anemia. The appellant lives alone, and since 2018, she has been approved for 17.5 daytime hours and 14 nighttime hours of PCA services per week.¹

Dr. Ellis testified that a registered nurse from UHC completed the current functional assessment in the appellant's home on July 6, 2022. The nurse observed her performing her activities of daily living. Based on the nurse's observations, the recommendation was for 11 daytime PCA hours per week. The nurse submitted the prior authorization request for these hours on July 8, 2022; Dr. Ellis then reviewed the record and determined that in accordance with regulations, the daytime PCA hours would be reduced from the 17.5 daytime hours and 14 nighttime hours that she had to the 11 daytime hours per week that were recommended (with no nighttime hours) (Exhibit 5).

Dr. Ellis testified that the current assessment was compared with an in-person assessment that was completed in September 2018 (Exhibit 6). The comparison revealed that some of the time authorized for assistance with the appellant's activities of daily living (ADLs) and instrumental activities of daily living (IADLs) was longer than ordinarily required for an individual with the appellant's functional capabilities. For assistance with ADLs, the assessment resulted in an increase to the time allotted for one of her ADLs, no change to the time for four of her ADLs, and a decrease to the time for three other ADLs. For her IADLs, there was a decrease to the time allotted for five, and one for which there was no change.

Dr. Ellis reviewed each of the ADLs and IADLs for which the appellant requires assistance and testified to the amount of time that UHC determined is necessary, as well as the level of assistance she requires. She explained that an individual is considered to require "limited" assistance when the PCA completes 50% of the task, and the member can do 50%, "extensive" or "severe" assistance when the PCA completes 75% of the task, and the member can do 25%, and "maximum" assistance when the PCA completes up to 95% of the task and the member does 5%.

¹ Dr. Ellis explained that the last in-person assessment took place in September 2018. Between that date and the most recent assessment, various telephone assessments occurred. Although UHC staff determined at those assessments that a reduction in PCA hours was warranted, UHC chose not to make any changes until a nurse was able to conduct another in-person assessment in the appellant's home.

Dr. Ellis reviewed the individual ADL task areas and referred to the assessment, as follows:

1. Bed Repositioning:

Reported: Member reports independence with repositioning both in a bed and in a chair.

Observed: Member demonstrated ability to roll to sides when lying in bed and RNCM observed member adjusting her position in a chair independently. She has to favor left side per MD recommendations after a recent cataract removal surgery.

Dr. Ellis explained that UHC determined (both in 2018 and at the current time) that the member is independent with this task, and thus no PCA time was authorized for this task (no change).

2. Walking/Ambulation (in and outside the home):

Reported: Member reports she is able to walk independently in the home. Member reports using a cane for outside ambulation.

Observed: Member lives in a small, easy to navigate apartment. She was observed ambulating independently with slight unsteadiness/limping due to pain in low back related to osteoarthritis. Outside ambulation not observed.

Dr. Ellis explained that at the prior in-person assessment in 2018, UHC had determined that the appellant needed “severe” assistance with this task and had authorized 45 minutes per week.² Dr. Ellis stated that because UHC determined that the appellant is currently independent with this task, the time was modified (decreased) to 0.

3. Transfers:

Reported: Member reports she is able to get in and out of her bed and chair without physical assistance.

Observed: Member was observed getting in and out of bed and chair without any assistance or DME use.

Dr. Ellis explained that in 2018, the appellant was noted to require “mild” assistance with this task, but no time for PCA assistance was authorized at that time. Currently, she was observed to be independent with transfers, so no time for PCA assistance was authorized (no change).

² Dr. Ellis explained that the time allotted for each task comes from MassHealth’s time-for-task guidelines for PCA services (Exhibit 7).

4. Bathing:

Reported: Member reports difficulty with bathing due to pain in multiple sites (shoulders, neck) and difficulty reaching across and bending to lower extremities. Member cannot use her left hand ([history] of fracture, still wearing a brace). Besides usual difficulty bending due to back pain and dizziness, she was instructed not to bend after a recent (██████) cataract removal surgery by MD. Member can wash own chest, abdomen, arms and perineum, but requires assistance with sides of torso, upper, middle and lower back and with lower extremities. Member reports fatigue with activity.

Member reports difficulty maintaining balance on one leg to go over the edge of the tub even when holding onto a grab bar. Member with [history] of falls. She reports a fear of falls and uses caregiver assistance to enter/exit the tub. Caregiver holds under the member's upper arm and around waist as she lifts each leg over the tub edge and places it in the tub.

Observed: When demonstrating ability to bend from sitting position, member could not reach past her calves. She grimaced and complained of pain in the back and shoulders with muscle pulling. Due to pain in multiple sites due to [diagnosis] of osteoarthritis, radiculopathy and spinal stenosis, and due to fatigue with activity related to dx of anemia, member requires physical assistance with washing her upper and lower body.

Member observed ambulating slowly with unsteady gait due to pain in low back. Due to unsteadiness related to pain in low back secondary to osteoarthritis, spinal stenosis and radiculopathy, member requires physical assistance with entering/exiting shower to maintain safety.

Dr. Ellis explained that time for PCA assistance with this task was increased from 2018. In 2018, UHC determined that the appellant's needs were severe and authorized 280 minutes per week. In the current assessment, UHC determined that the appellant's needs are severe/extensive and authorized 290 minutes per week. That time is broken down as follows: For assistance with bathing the upper and lower body, UHC authorized 31 minutes per day, 7 days per week, for a total of 220 minutes. For assistance with bathing transfers, UHC authorized 10 minutes per day, 7 days per week, for a total of 70 minutes.

5. Personal Hygiene/Hair:

Reported: Member reports she is able to independently wash face and hands, brush teeth, and comb hair. Member receives caregiver assistance with nail trimming.

Member reports she cannot properly wash her hair due to pain in shoulders (L>R)

and inability to use her left hand. Member has pain in left hand and does not use it, she continues to wear a brace per ortho recommendation.

Observed: Member well-groomed. She mimicked face washing and teeth brushing.

Member noted guarding her left hand. Brace in place. Due to pain in shoulders related to [diagnosis] of osteoarthritis and due to inability to fully use left hand due to [history] of recent injury, member requires assistance with washing her hair.

Dr. Ellis explained that at the prior in-person assessment in 2018, UHC had determined that the appellant needed moderate assistance with this task, and had authorized 115 minutes per week.³ Dr. Ellis stated that because UHC determined that the appellant is currently independent with all of the grooming tasks except hair washing (with which she requires limited assistance), the time was modified (decreased) to 30 minutes per week (4 minutes per day, 7 days per week, rounded up to 30 minutes).

6. Dressing/Undressing (upper and lower body):

Reported: Member reports that although with some difficulty related to shoulder and neck pain, she is able to put shirts/jackets on slowly yet independently. Member is unable to put on a bra because of the pain and uses caregiver assistance with that.

Member reports pain in both shoulders/arms and back with bending. She usually dresses her lower body in semi-lying position to facilitate the process. Member uses assistance with socks as they require longer time, more effort and more precise movements. Member has difficulty reaching feet and remaining in the position for some time due to pain. Member is able to put on underwear and pants/skirts (as they are looser, more stretchy) taking rest breaks as needed. Member cannot lace her shoes and tries to wear slip-on shoes whenever possible.

Observed: Member demonstrated impaired ROM in both shoulders, left worse than the right one. She grimaced of pain when trying to raise and take the arms to the side and back. Member with medium strength hand grasps. Due to pain in shoulders related to [diagnosis] of osteoarthritis and due to inability to fully use left hand due to [history] of recent injury, member requires some assistance with dressing her upper body.

When demonstrating ability to bend from sitting position, member could not reach

³ Dr. Ellis explained that in the prior assessment, the time authorized was not broken down by task but rather was just authorized generally under the task of grooming.

past her calves. She grimaced and complained of pain in the back and shoulders with muscle pulling. Due to pain in multiple sites related to [diagnosis] of osteoarthritis, radiculopathy and spinal stenosis; and due to fatigue with activity related to [diagnosis] of anemia, member requires physical assistance with putting her socks on.

Dr. Ellis explained that at the prior in-person assessment in 2018, UHC had determined that the appellant needed moderate assistance with this task, and had authorized 115 minutes per week. Dr. Ellis stated that UHC has determined that the appellant currently requires limited assistance with this task, and thus the time was modified (decreased) to 70 minutes per week. That time is broken down as follows: For assistance with upper body dressing, UHC authorized 5 minutes per day, 7 days per week, for a total of 35 minutes. For assistance with lower body dressing, UHC authorized 5 minutes per day, 7 days per week, for a total of 35 minutes.

7. Eating:

Reported: Member reports independence with eating and denies difficulty chewing or swallowing.

Observed: Member mimicked bringing a spoon to her mouth. Well coordinated hand movements observed.

Dr. Ellis explained that UHC determined (both in 2018 and at the current time) that the member is independent with this task, and thus no PCA time was authorized for this task (no change).

8. Toileting:

Reported: Member reports she does not use any assistance with toileting. She can transfer to toilet seat independently using a grab bar for support, clean self after toileting and adjust clothing.

Observed: Member demonstrated ability to transfer to the toilet seat independently. She used a grab bar on the wall next to the toilet. Member able to reach behind to clean self.

Dr. Ellis explained that UHC determined (both in 2018 and at the current time) that the member is independent with this task, and thus no PCA time was authorized for this task (no change).

The appellant's daughter, who is her appeal representative and also her PCA, appeared at hearing by phone and spoke on the appellant's behalf. She referenced three letters submitted prior to hearing. One is a letter from the daughter, in which she states in relevant part the following:

[The appellant] has several health issues that don't allow her to do most of the daily activities and require the help of a PCA. She has been getting all the help

for several years and with age her condition has not improving. In addition, she has broken her arm in [REDACTED] 2021 which negatively affected not only her abilities for regular dally activities but also her mental state. Please see attached her primary care physician's letter detailing some of the issues she has had for many years. Additionally, I spoke to her psychiatrist, Dr. Gregory Brodsky who indicated she has depression and her condition declined significantly this year.

(Exhibit 1).

The appellant's physician also submitted a letter, dated [REDACTED], 2022, which provides in relevant part as follows:

[The appellant] has been my patient for several years with a complicated medical history that incudes hypertension, diabetes, spinal stenosis, anxiety, and osteoarthritis. [The appellant] would benefit from increased hours during the night time and possibility [sic] with some extra day hours. Her health has declined with age and she will require extra time.

(Exhibit 1).

The appellant's physician submitted an updated letter, dated [REDACTED] 2022, which provides in relevant part as follows:

The spinal stenosis condition that she has is causing serious pain in her legs effecting [sic] her ability to do regular daily activities such has dressing, cooking, bathing, cleaning, and so on. Additionally, arthritis of the right knee has caused swelling and pain again effecting [sic] her daily activities.

Also she broke both her wrists last year which have healed but not fully. The pain in her hands often gets worse and is hard to manage.

She is suffering from depression and is being monitored by a psychiatrist regularly. She often forgets her medications and needs close management to make sure she is taking everything on time.

Overall, her condition has declined with age, and she will benefit from increased hours during the day and night.

(Exhibit 8).

The appellant's daughter testified that she was not able to be present at the [REDACTED] assessment, but stated that her mother told her that she was sitting for the assessment, and was never asked to lie down. The appellant's spinal stenosis has gotten worse in the past few months, and she has been having a hard time coping with the severe pain in her legs. The appellant's wrist fracture from

last year still causes her pain. She stated that her mother does not like to say negative things, and likely did not paint a true picture when asked about her abilities.

Regarding the ADLs, the appellant's daughter stated that the appellant does in fact need help getting in and out of bed, as well as repositioning while in bed. The daughter comes to her mother's apartment every morning and every evening to assist her mother in and out of bed. She explained that the appellant needs a lot of assistance with dressing, for the same reasons she requires so much extensive assistance with bathing. She has significant pain in her shoulders, back, and wrist, and cannot bend much at all. As a result, she needs help with many upper body clothing items (shirts, bra), as well as lower body clothing items (pants, socks, shoes). She can possibly manage a gown-type garment with buttons in the front, wide pull-on pants, and slip-on shoes. Otherwise, she needs assistance with all other clothing items. For grooming, although the appellant can wash her hands, she needs assistance with washing her face, as well as with combing and washing her hair. The appellant's daughter conceded that the appellant can independently ambulate in her apartment, and can get up from a chair if alone (albeit with pain). Further, the daughter confirmed that the appellant is independent with eating and toileting.

Dr. Ellis then reviewed the individual IADL task areas, as follows:

9. Medication:

Reported: Member reports forgetfulness related to depression, so she uses caregiver assistance with preparing a pill box for the week as member can mix up meds if does it herself. Member states the pill box serves as a reminder she needs to take her meds and she has no trouble taking them.

Observed: A pill box filled with meds for the week observed. Member with some knowledge of her meds. Due to decreased concentration related to dx of depression, member requires caregiver assistance with prefilling her pill box.

Dr. Ellis explained that at the prior in-person assessment in 2018, UHC had authorized 80 minutes per week for assistance with this task, which included prefilling the pill box and providing medication reminders. She stated that the PCA program does not include reminders or supervision, and that authorization time for assistance with reminders was an error. In the current assessment, UHC authorized 20 minutes per week to allow the PCA time to prefill the pill box, noting that the appellant has "some difficulty" with this task.

10. Meal Preparation:

Reported: Member is able to fix simple breakfasts using pre-cooked foods like deli meats, bread, yogurt, she can make herself a cup of tea. She can do some cutting and slicing. However, the member has difficulty bending, carrying and operating pots and pans due to pain in neck, back, shoulders/arms and left hand, which she currently cannot fully use; and she reports fatigue with activity.

Member uses caregiver assistance with lunches and dinners.

Observed: Member demonstrating impaired ROM in both shoulders, complaining of pain in neck, shoulders, back. Left hand in brace, member noted guarding it. Due to pain in multiple sites related to dx of osteoarthritis, radiculopathy and spinal stenosis; and due to fatigue with activity related to dx of anemia, member requires assistance with lunch and dinner preps.

Dr. Ellis explained that in the 2018 assessment, UHC authorized 220 minutes per week for assistance with this task. In this assessment, UHC authorized 135 minutes per week for assistance with lunch and dinner, noting that the appellant has “some difficulty” with these tasks. She indicated that the previous authorization could have included time for assistance with breakfast, although she is not sure. The appellant’s daughter explained that she typically makes a more substantial breakfast for the appellant, such as eggs or oatmeal. In response, UHC agreed to increase the authorization to 170 minutes per week (to include an additional 35 minutes per week for assistance with breakfast preparation).

11. Laundry:

Reported: Member reports laundry is located in the same building downstairs. Member is able to gather her laundry but has difficulty with carrying, loading/unloading it and folding/putting it away due to fatigue with activity and pain in multiple sites and inability to fully use her left hand.

Observed: Due to pain in multiple sites related to dx of osteoarthritis, radiculopathy and spinal stenosis; and due to fatigue with activity related to [diagnosis] of anemia, member requires assistance with loading/unloading and folding/putting away her laundry.

Dr. Ellis explained that in the 2018 assessment, UHC authorized 95 minutes per week for assistance with this task. In this assessment, UHC authorized 20 minutes per week, noting that the appellant has “some difficulty” with this task. Dr. Ellis stated that the 20 minutes is to be used for carrying, loading, unloading and folding one load of laundry per week. The appellant’s daughter stated that the appellant generates two loads of laundry per week, and that she typically takes the laundry to her house and does it there. She estimated that the tasks associated with laundry take approximately 45 minutes per week. In response to this testimony, UHC agreed to authorize 45 minutes per week for assistance with laundry.

12. Housekeeping:

Reported: Member reports she can wash some dishes, do some dusting, wipe a spill off the table or rinse the sink but for heavier cleaning involving mopping/vacuuming/changing bed and cleaning bathroom she needs physical assistance due to fatigue with activity and due to pain in low back, shoulders,

neck and left hand.

Observed: Member guarding left hand, reporting pain in multiple sites; with difficulty bending, carrying and reaching. Due to pain in multiple sites related to [diagnosis] of osteoarthritis, radiculopathy and spinal stenosis; and due to fatigue with activity related to [diagnosis] of anemia, member requires assistance with changing bed, mopping, sweeping, vacuuming and cleaning bathroom.

Dr. Ellis explained that in the 2018 assessment, UHC authorized 60 minutes per week for assistance with this task. In this assessment, UHC authorized 40 minutes per week, noting that the appellant has “some difficulty” with this task. The appellant’s daughter explained that the appellant does not help with housework at all – she does not wash dishes or dust at all. She stated that she does not understand the decrease in time, as the appellant’s condition is not getting better but rather is getting worse.

13. Shopping:

Reported: Member reports she can prepare a shopping list. During shopping, member is able to independently collect and put in the cart lighter and smaller items. Due to difficulty with bending, carrying and reaching related to pain secondary to osteoarthritis, as well as fatigue with activity related to dx of anemia, member requires assistance with heavier and bulkier items as well as with putting those away at home.

Dr. Ellis explained that in the 2018 assessment, UHC authorized 40 minutes per week for assistance with this task. In this assessment, UHC authorized 25 minutes per week, noting that the appellant has “some difficulty” with this task. The appellant’s daughter explained that the appellant can prepare a shopping list, but does not help with shopping at all.

14. Medical Appointments:

Reported: Member uses assistance with ordering transportation and caregiver provides transportation at times. Member is able to independently enter/exit the vehicle and walk to doctor’s office.

Dr. Ellis explained that UHC determined (both in 2018 and at the current time) that the member is independent with this task, and thus no PCA time was authorized for this task (no change).

Dr. Ellis also reviewed the nighttime PCA hours and explained that because the appellant has now been found to be independent with walking/ambulation, which is a change from 2018, the time for PCA assistance at night was modified (decreased) to 0.⁴

⁴ Dr. Ellis added that the two other activities related to nighttime PCA hours, transferring and toileting, are activities with which the appellant has demonstrated independence both in the previous and current

Findings of Fact

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

1. The appellant, a female in her late ■■■, joined the UHC SCO in 2016.
2. The appellant has diagnoses that include major depressive disorder, spinal stenosis and radiculopathy of the lumbar region, osteoarthritis, hypertension, bilateral cataracts, diabetes, and anemia.
3. The appellant lives alone, and for several years has been approved for 17.5 daytime hours and 14 nighttime hours of PCA services per week.
4. A registered nurse from UHC completed the current PCA assessment in the appellant's home on July 6, 2022. Based on the assessment, UHC reduced the appellant's daytime PCA hours from 17.5 to 11 per week, and her nighttime PCA hours from 14 to 0 per week.
5. UHC approved no time for daytime PCA assistance with bed positioning.
 - a. The appellant was not approved for any time for assistance with this task in the previous in-person evaluation in 2018.
 - b. The UHC nurse indicated that the appellant has the ability to roll to sides when lying in bed.
 - c. The appellant is independent with ambulation in her apartment, is independent with transfers in and out of a chair, and is independent with toileting.
6. UHC approved no time for daytime PCA assistance for walking/ambulation.
 - a. The appellant was approved for 45 minutes per week for this task in the previous evaluation.
 - b. The appellant has conceded that she is independent with ambulation in her apartment.
7. UHC approved no time for daytime PCA assistance for transfers.
 - a. The appellant was not approved for any time for assistance with this task in the previous evaluation.
 - b. The appellant has conceded that she is independent with transfers.

evaluations.

8. UHC approved 290 minutes per week of daytime PCA assistance with bathing.
 - a. The breakdown of the time to provide extensive assistance was bathing the upper and lower body (31 minutes per day, 7 days per week, for a total of 220 minutes) and bathing transfers (10 minutes per day, 7 days per week, for a total of 70 minutes).
 - b. The appellant was approved for 280 minutes per week for this task in the previous evaluation.
 - c. The appellant did not dispute the time authorized for assistance with this task.
9. UHC approved 30 minutes per week of daytime PCA assistance with personal hygiene/hair.
 - a. The breakdown of time to provide limited assistance with washing hair was 4 minutes, 7 days per week for a weekly (rounded) total of 30 minutes.
 - b. The appellant was approved for 115 minutes per week (or slightly more than 15 minutes per day) for this task in the previous evaluation on the basis that she required moderate assistance with general grooming tasks (not specified).
 - c. Due to pain and limitations from her various diagnoses, the appellant cannot assist with hair washing or combing at all.
 - d. Due to pain and limitations from her various diagnoses, the appellant requires some assistance with washing her face.
 - e. The MassHealth time for task guidelines provide an average range of 5-25 minutes per day for assistance with shampooing hair, depending on the level of assistance.
 - f. The MassHealth time for task guidelines provide an average range of 10-25 minutes per day for assistance with other grooming tasks, depending on the level of assistance.
10. UHC approved 70 minutes per week of daytime PCA assistance with dressing/undressing.
 - a. The breakdown of time to provide limited assistance was dressing the upper body (5 minutes per day, 7 days per week, for a weekly total of 35 minutes), and dressing the lower body (5 minutes per day, 7 days per week, for a weekly total of 35 minutes) (70 minutes per week total).
 - b. The appellant was approved for 115 minutes per week for this task in the previous evaluation on the basis that she requires moderate assistance with this task.

- c. Due to pain and limitations from her various diagnoses, the appellant requires a significant amount of assistance with upper body dressing; she cannot independently put on a bra or a top that does not have buttons all the way down the front.
 - d. Due to pain and limitations from her various diagnoses, as well as the difficulties she experiences with bending, the appellant requires a significant amount of assistance with lower body dressing; she cannot independently don most pants, socks, or shoes (unless they are slip-on shoes).
 - e. The appellant requires more than limited assistance with dressing.
 - f. The MassHealth time for task guidelines provide an average range of 7-30 minutes per day for assistance with dressing, depending on the level of assistance.
 - g. The MassHealth time for task guidelines provide an average range of 5-25 minutes per day for assistance with undressing, depending on the level of assistance.
11. UHC approved no time for daytime PCA assistance with eating.
- a. The appellant was not approved for any time for assistance with this task in the previous evaluation.
 - b. The appellant has conceded that she is independent with eating.
12. UHC approved no time for daytime PCA assistance with toileting.
- a. The appellant was not approved for any time for assistance with this task in the previous evaluation.
 - b. The appellant has conceded that she is independent with toileting.
13. UHC approved 20 minutes per week of daytime PCA assistance with medications.
- a. The time was authorized for the PCA to prefill the appellant's weekly pill box.
 - b. The appellant was approved for 80 minutes per for this task in the previous evaluation. The 80 minutes included time for medication reminders.
 - c. The MassHealth time for task guidelines provide an average time estimate of up to 20 minutes per week to provide assistance to set up weekly pill box.
14. UHC approved 170 minutes per week of daytime PCA assistance with meal preparation.
- a. The time was authorized for assistance with preparing breakfast (35 minutes per

week), lunch (50 minutes per week), and dinner (85 minutes per week).

- b. The appellant was approved for 220 minutes per week in the previous evaluation.
- c. The appellant is able to assist with meal preparation in a limited manner, including getting herself pre-cooked foods like deli meats, bread, yogurt, as well as making herself a cup of tea. She can do some cutting and slicing.

15. UHC approved 45 minutes per week of daytime PCA assistance with laundry.

- a. The time was authorized for assistance carrying, loading/unloading, and folding/putting away clothes.
- b. The appellant was approved for 95 minutes per week in the previous evaluation.
- c. The appellant's PCA agreed that assistance with laundry tasks takes 45 minutes per week.

16. UHC approved 40 minutes per week of daytime PCA assistance with housekeeping.

- a. The appellant was approved for 60 minutes per week for this task in the previous evaluation.
- b. The appellant does not assist with any housekeeping tasks.
- c. The MassHealth time for task guidelines provide an average time estimate of between 30-90 minutes per week to provide assistance with housekeeping.

17. UHC approved 25 minutes per week of daytime PCA assistance with shopping.

- a. The appellant was approved for 40 minutes for this task in the previous evaluation.
- b. The appellant is not able to assist with any shopping tasks except preparing a list.
- c. The MassHealth time for task guidelines provide an average time estimate of between 15-90 minutes per week to provide assistance with shopping.

18. UHC approved no time for daytime PCA assistance for medical appointments.

- a. The appellant was not approved for any time for assistance with this task in the previous evaluation.
- b. The appellant has conceded that she does not need PCA assistance with this task.

19. UHC approved no time for nighttime PCA hours.

- a. UHC did not authorize any nighttime PCA hours because it determined that the appellant is currently independent with walking/ambulation.
- b. The appellant was approved for 14 nighttime PCA hours per week in the previous evaluation. In that evaluation, the appellant had demonstrated the need for PCA assistance with walking/ambulation.
- c. In both the previous and current evaluations, the appellant was found to be independent with transferring and toileting.

Analysis and Conclusions of Law

Under 130 CMR 508.010, MassHealth members who are enrolled in managed care plans 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.

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

(1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;

(2) a decision to deny or provide limited authorization of a requested service, including the type or level of service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(3) a decision to reduce, suspend, or terminate a previous authorization for a service;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following:

- (a) failure to follow prior-authorization procedures;
- (b) failure to follow referral rules; and
- (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.012: *Time Limits for Resolving Internal Appeals*;

(6) a decision by a managed care contractor (except a behavioral health contractor) to deny a request by a member who resides in a rural service area served by only one managed care contractor (except the behavioral health contractor) to exercise his or her right to obtain services outside the managed care contractor's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

- (a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the managed care contractor's network;
- (b) the provider from whom the member seeks service is the main source of service to the member, except that member will have no right to obtain services from a provider outside the managed care contractor's network if the managed care contractor gave the provider the opportunity to participate in the managed care contractor's network under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;
- (c) the only provider available to the member in the managed care contractor's network does not, because of moral or religious objections, provide the service the member seeks; or
- (d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of

the related services are available within the managed care contractor's network;
or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410 (130 CMR 422.402). Per 130 CMR 422.403(C), MassHealth covers PCA 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 PCA services are authorized for the member in accordance with 130 CMR 422.416; (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A); and (4) the MassHealth agency has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(A) Activities of Daily Living (ADLs). 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, or grooming;
- (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 or bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

UHC also limits coverage to those services that have been determined to be medically necessary. Per 130 CMR 450.204(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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

In this case, the appellant's SCO, UHC, approved her for 11 hours of daytime and 0 nighttime PCA services per week, which was a decrease from the time previously approved. As explained at hearing, the reduction was the result of a recent in-person assessment at which a UHC nurse

evaluated the appellant's functional abilities. While the time for certain tasks was increased in this evaluation, many were decreased. The appellant's daughter maintains that the appellant continues to require assistance at the same, if not a higher level, as she has had in place.

After reviewing the record, I conclude that the evidence supports UHC's reduction of time in some of the areas, but that the appellant has demonstrated medical necessity to restore time in others.

Daytime PCA Hours:

Bed Repositioning: UHC did not authorize any time for this task on the basis that the appellant has the ability to reposition herself independently in bed. The appellant contends that she needs assistance with this task, stating that she receives assistance getting in and out of bed each day. On this record, however, there is not sufficient evidence of medical necessity to warrant the authorization of any time for assistance with this task. Notably, the appellant has conceded that she is independent with ambulation in her apartment, is independent with transfers in and out of a chair, and is independent with toileting (including getting on and off the toilet). Given this level of independence with these other tasks, the appellant has not demonstrated the need for any assistance here.⁵

Walking/Ambulation: UHC did not authorize any time for this task on the basis that the appellant has the ability to independently ambulate in the home. The appellant has conceded that she is independent with this task.

Transfers: UHC did not authorize any time for this task on the basis that the appellant has the ability to independently transfer. The appellant has conceded that she is independent with this task.

Bathing: UHC authorized 290 minutes per week for the PCA to provide extensive assistance with this task. The appellant did not offer any specific reason why this time would be inadequate to meet the appellant's needs, nor is any apparent.

Personal Hygiene/Hair: UHC authorized 30 minutes per week of daytime PCA assistance with personal hygiene/hair to provide limited assistance with washing hair (4 minutes, 7 days per week. This is a decrease from the time previously authorized (115 minutes per week to provide moderate assistance with general grooming tasks). The appellant's daughter/PCA offered compelling testimony that the appellant still needs (at least) moderate assistance with some grooming tasks. Specifically, she cannot assist with hair shampooing or combing at all, and needs some assistance with washing her face. Given these limitations, the appellant has demonstrated her needs for these grooming tasks have not decreased, and that 115 minutes per week is medically necessary.

Dressing/Undressing: UHC authorized 70 minutes per week of daytime PCA assistance with dressing/undressing to provide limited assistance (5 minutes per day for help with upper body

⁵ While not discussed at hearing, the appellant could consider adaptive equipment, if necessary.

dressing and 5 minutes per day for help with lower body dressing). This is a decrease from the time previously authorized (115 minutes per week to provide moderate assistance with upper and lower body dressing). The appellant's daughter/PCA offered compelling testimony that the appellant still needs (at least) moderate assistance with dressing and undressing. Specifically, due to pain throughout her body, and difficulties bending, the appellant requires assistance with donning and doffing many clothing items, including some shirts, her bra, most pants, socks, and shoes. Given these limitations, the appellant has demonstrated her needs in this area have not decreased, and that 115 minutes per week is medically necessary.

Eating: UHC did not authorize any time for this task on the basis that the appellant has the ability to independently eat. The appellant has conceded that she is independent with this task.

Toileting: UHC did not authorize any time for this task on the basis that the appellant is independent with all toileting tasks. The appellant has conceded that she is independent in this area.

Medication: UHC authorized 20 minutes per week of daytime PCA assistance to allow time for the PCA to prefill the appellant's pill box. This is a decrease from the 80 minutes per week previously authorized, as the time prior authorization included time for medication reminders. The appellant did not offer any specific reason why this time would be inadequate to meet the appellant's needs, nor is any apparent.

Meal Preparation: UHC authorized 170 minutes per week for daytime PCA assistance with meal preparation. UHC had initially authorized time for assistance with lunch and dinner only (135 minutes per week), but agree to increase the authorization to include time for assistance with breakfast as well (170 minutes per week). Although this is a decrease from the time authorized in the previous evaluation (220 minutes per week), the appellant did not offer any specific evidence as to why 170 minutes per week is insufficient to meet her needs. The appellant has not offered sufficient evidence to justify more time.

Laundry: UHC initially authorized 20 minutes per week for daytime PCA assistance with this task, which is a decrease from the 95 minutes authorized in the previous evaluation. In response to the daughter's testimony that the laundry tasks take 45 minutes per week, UHC agreed to increase the time to meet the appellant's needs. The appellant did not offer any further evidence to justify any additional increase.

Housekeeping: UHC authorized 40 minutes per week for daytime PCA assistance with this task, which is a decrease from the 60 minutes authorized in the previous evaluation. UHC argued generally that the decrease was indicated because the appellant performs some housekeeping tasks such as wiping up spills, washing dishes, and dusting. The appellant's daughter offered credible testimony that the appellant's health is getting worse, not better, and she does not participate at all in any of the housekeeping tasks. Because the record reflects that the appellant's condition has not improved since the previous evaluation, it is reasonable to conclude that the appellant's assistance needs in this area have not decreased either. The appellant has demonstrated that 60 minutes per

week for daytime PCA assistance with housekeeping is medically necessary.

Shopping: UHC authorized 25 minutes per week for daytime PCA assistance with this task, which is a decrease from the 40 minutes authorized in the previous evaluation. UHC argued generally that the decrease was indicated because the appellant can prepare a shopping list and can collect lighter items during shopping excursions. The appellant's daughter offered credible testimony that while the appellant can prepare the shopping list, she cannot participate at all in any other task related to shopping. Because the record reflects that the appellant's condition has not improved since the previous evaluation, it is reasonable to conclude that the appellant's assistance needs in this area have not decreased either. The appellant has demonstrated that 40 minutes per week for daytime PCA assistance with shopping is medically necessary.

Medical Appointments: UHC did not authorize any time for this task on the basis that the appellant did not need PCA assistance with this task at the time of the previous evaluation, and does not need assistance now. The appellant agreed with this conclusion.

Nighttime PCA Hours:

The record reflects that the appellant is currently independent with the activities of walking/ambulation in the home, transferring, and toileting. Because these are the tasks with which PCAs assist during the night, the appellant has not demonstrated that any nighttime PCA assistance is medically necessary at this time.

For the reasons described above, this appeal is approved in part and denied in part.

Order for SCO

Adjust the daytime PCA hours as follows:

- Personal Hygiene/Hair: Add 85 minutes per week, for a total of 115 minutes per week
- Dressing/Undressing: Add 45 minutes per week, for a total of 115 minutes per week
- Housekeeping: Add 20 minutes per week, for a total of 60 minutes per week
- Shopping: Add 15 minutes per week, for a total of 40 minutes per week

Recalculate the total daytime PCA hours in accordance with this decision and send notice of implementation.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact UnitedHealthcare. 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.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: UnitedHealthcare SCO
Attn: Cheryl A. Ellis, MD
LTC Medical Director
950 Winter St., Suite 3800
Waltham, MA 02451

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