

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part, Denied in Part	<b>Appeal Number:</b>	2208847
<b>Decision Date:</b>	2/2/2023	<b>Hearing Date:</b>	01/20/2023
<b>Hearing Officer:</b>	Alexis Demirjian		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Cassandra Horne, Appeals and Grievances  
Manager; Kaley Emery, Appeals Supervisor;  
Jeremiah Mancuso, R.N., Clinical Appeals  
Nurse; (all from Commonwealth Care Alliance,  
and all by telephone)

**Interpreter:**  
Ziera, Marisa



*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

<b>Appeal Decision:</b>	Approved in Part, Denied in Part	<b>Issue:</b>	Modification of PCA Time
<b>Decision Date:</b>	2/2/2023	<b>Hearing Date:</b>	01/20/2023
<b>MassHealth's Rep.:</b>	Cassandra Horne, Jeremiah Mancuso, Kaley Emery, CCA	<b>Appellant's Rep.:</b>	Pro Se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 November 23, 2023, Commonwealth Care Alliance (CCA), a MassHealth Independent Care Organization (ICO) 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 requested PCA services from 28.50 day/evening hours and zero-night hours per week, to 22 day and zero-night hours of PCA services per week, effective October 1, 2022 through September 2023. (Exhibit 3).<sup>1</sup> The Appellant filed this external appeal with the Board of Hearings (BOH) in a timely manner on November 29, 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)).

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<sup>1</sup> An Independent Care Organization is defined at 130 CMR 501.001 as "an organization with a comprehensive network of medical, behavioral-health care, and long-term services and supports providers that integrates all components of care, either directly or through subcontracts, and has contracted with the Executive Office of Health and Human Services (EOHHS) and the Centers for Medicare & Medicaid Services (CMS) and been designated as an ICO to provide services to dual eligible individuals under M.G.L. c. 118E. ICOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services."

## **Action Taken by MassHealth**

CCA denied the Appellant's level one internal appeal of modification of a request for PCA services.

## **Issue**

Did CCA 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, and who testified through an interpreter. CCA was represented by its manager of appeals and grievances, an appeals supervisor, a clinical appeals nurse, all of whom appeared via Microsoft Teams. CCA completed a yearly reevaluation, conducted by a Registered Nurse, on July 13, 2022. As a result of this evaluation, on July 13, 2022, CCA notified the Appellant in writing that it was planning to reduce his PCA services from 28.50 day/evening hours and zero-night hours per week, to 22 day and zero evening hours of PCA services per week, effective October 1, 2022 through September 2023. (Testimony, Exhibit 5).

Following the issuance of the September 2, 2022 written notice of the modification of his PCA services, the Appellant timely requested a level one internal appeal with CCA on October 26, 2022. A CCA medical director reviewed the decision and the Appellant's appeal, and subsequently denied his level one appeal. On November 23, 2022, CCA issued a letter of denial to the Appellant, standing by its decision to reduce the Appellant's PCA day/evening assistance to 22 hours per week, and zero-night hours per week (Exhibit 5). The Appellant then timely filed this instant external appeal with the BOH (Exhibit 2).

The Appellant, who is under 65 years of age and lives in the community with his unmarried partner/surrogate, and three children, one child being 18 years of age. (Testimony, Exhibit 5). His diagnoses include major depressive disorder, schizophrenia, anxiety disorder, insomnia, osteoarthritis, psoriasis, dizziness, chronic pain, constipation, Rheumatoid arthritis and GERD. The (Testimony, Exhibit 5).

CCA testified that CCA modified the time requested PCA assistance with meal preparation, shopping, housekeeping and laundry. Based on the evaluation and the informal supports in the home, CCA determined that reductions to meal preparation, shopping, housekeeping, and laundry were consistent with guidelines and appropriate.

According to CCA, the Appellant lives with family members who are able and are expected to help with the Appellant's IADLs such as routine laundry, housekeeping, shopping and meal preparation and clean-up, as such they would not be included in the Appellant's PCA hours. Further CCA testified that, PCA services may not be provided to the benefit of non-disabled household members; for

example, cleaning common areas or laundry for other persons living in the home.

Thus, CCA made the following modifications to the requested PCA time:

CCA reduced the requested time for dinner preparation of 35 minutes/7 days per week or 245 minutes/per week to 0 minutes/7 days per week or 0 minutes/per week.

CCA reduced the requested time of laundry assistance from 60 minutes to 0 minutes per week.

CCA reduced the requested time for housekeeping assistance from 45 minutes to 35 minutes per week.

CCA reduced the requested time for shopping assistance from 60 minutes per week to 0 minutes per week.

The Appellant's partner/surrogate works from 8:30 am to 5:30 pm, 7 days per week, and then leaves around 6:30 pm each evening for a second job. (Testimony). The Appellant's 18-year-old child is a college student and is not in the home between approximately 8:30 am to 5:30 pm during the school week, the Appellant also testified that his son is not available during the weekends to assist with the Appellant's IADLs.

The Appellant testified that he does not eat dinner with his family and eats his last meal of the day between 2:30 – 3 pm due to his GERD, when neither his partner/surrogate nor his adult son are home. (Testimony). Additionally, the Appellant does not eat the same food prepared for the later family meal due to his medical condition. (Testimony)

## **Findings of Fact**

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

1. The Appellant is under 65 years of age, lives in the community with his unmarried partner/surrogate and three children and is enrolled in CCA's ICO program. (Testimony)
2. His diagnoses include major depressive disorder, schizophrenia, anxiety disorder, insomnia, osteoarthritis, psoriasis, dizziness, chronic pain, constipation, Rheumatoid arthritis, and GERD. (Testimony, Exhibit 5)
3. CCA completed a reevaluation of the Appellant, conducted by a Registered Nurse on July 13, 2022. (Testimony, Exhibit 5)
4. Based on the July 13, 2022 evaluation, CCA reduced the Appellant's PCA hours from 28.50 day/evening hours and zero-night hours per week, to 22 day and zero evening hours of PCA services per week, effective October 1, 2022 through September 30, 2023. (Testimony,

Exhibit 5).

5. The Appellant timely requested a level one internal appeal of this decision from CCA on October 26, 2022. (Testimony, Exhibit 5)
6. The CCA medical director reviewed the decision and the Appellant's appeal, and subsequently denied his level one appeal. (Testimony, Exhibit 5)
7. On November 23, 2022, CCA issued a letter of denial to the Appellant, standing by its decision to reduce the Appellant's PCA assistance hours from 28.50 day/evening hours and zero-night hours per week, to 22 day and zero evening hours of PCA services per week, effective October 1, 2022 through September 30, 2023. (Testimony, Exhibit 3, Exhibit 5)
8. The Appellant subsequently filed a timely external appeal of CCA's level one appeal denial with the BOH. (Exhibit 2)
9. CCA determined that the Appellant has family supports that live with the Appellant and that they can assist with the Appellant's evening meal preparation, housekeeping, shopping and laundry. (Testimony and Exhibit 5)
10. The Appellant's spouse is working outside the home during the hours of 8:30 am – 5:30 pm. (Testimony)
12. The Appellant's college aged son is outside the home during the hours of 8:30 am - 5:30 pm and is generally not home to prepare the Appellant's dinner. (Testimony)
13. The Appellant has a special diet due his medical conditions and eats different meals than what his family eats at dinner. (Testimony)
14. The Appellant eats his dinner meal between 2:30 pm and 3 pm due to his GERD and there is no family member available at that time to prepare his dinner. (Testimony)

## **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 508.007 (C):

Obtaining Services When Enrolled in a ICO. When a member is enrolled in an ICO in accordance with the requirements under 130 CMR 508.007(A), the ICO will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, the ICO is required to provide evidence of its coverage, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to specialty, behavioral health, and long-term services and supports.

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)

The Appellant exhausted the internal appeal process offered through his ICO, and thereafter, requested a fair hearing with BOH, to which he is entitled pursuant to the above regulations.

As MassHealth's agent, CCA is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth ICOs, above, CCA 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 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 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 422.410 (C) When determining the number of hours of physical assistance that a member requires under 130 CMR 422.410 (B) for IADLS, the PCA 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 PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- 3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLS.

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; or**
- (H) PCA services provided to a member without the use of EVV as requires by the MassHealth agency.

(Emphasis added)

There were four modifications at issue in this appeal: dinner preparation, shopping, housekeeping, and laundry. As stated above, pursuant to 130 CMR 422.410 (C), there is a presumption 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.

During the hearing, there was no testimony or documentary evidence submitted that rebutted the agency's presumption that family members are aiding the Appellant with the IADLs of laundry, housekeeping, and shopping. Pursuant to 130 CMR 422.412 (F) (G) "Noncovered Services:", services provided by family members and surrogates are not covered under PCA services. Therefore, CCA's modifications of those IADLs were appropriate and consistent with the rules and regulations. Accordingly, the appeal with respect to the modifications of laundry, shopping, and housekeeping is DENIED.

However, with respect to the IADL of dinner preparation, the testimonial evidence reflects that the Appellant eats a special diet and eats his dinner (last meal of the day) before his partner/surrogate and adult age son have returned to the home and are able to assist with that task. CCA did not refute this testimony. CCA did not dispute that the Appellant needs assistance with meal preparation and cleanup.

In view of these circumstances, the hearing officer determines that 35 minutes/7 days per week or 245 per week of PCA time is medically necessary for the for the preparation of the Appellant's dinner, and subsequent cleanup.

This portion of the appeal is APPROVED.

## **Order for MassHealth**

Rescind notices of September 2, 2022 and November 23, 2022. Send notice to the Appellant authorizing him for 26.25 hours of day PCA assistance per week, and 0 nighttime hours of PCA assistance per week, for the PA period October 1, 2022 through September 30, 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 this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Alexis Demirjian  
Hearing Officer

Board of Hearings

cc:

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