

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in Part,
Denied in Part

Appeal Number: 2209117

Decision Date: 2/9/2023

Hearing Date: 01/20/2023

Hearing Officer: Alexis Demirjian

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Cassandra Horne
Kaley Emery
Jeremiah Mancuso
Elaine Cahill



*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:	Approved in Part, Denied in Part	Issue:	Modification of PCA Hours
Decision Date:	2/9/2023	Hearing Date:	01/20/2023
MassHealth's Rep.:	Cassandra Horne Kaley Emery Jeremiah Mancuso Elaine Cahill	Appellant's Rep.:	Pro se
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 November 21, 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 24.50 day/evening hours and 14 night hours per week, to 24.25 day and 14 night hours of PCA services per week, effective September 1, 2022. (Exhibit 3).¹ The Appellant filed this external appeal with the Board of Hearings (BOH) in a timely manner on November 21, 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)).

¹ 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, and occupational therapist, all of whom appeared via Microsoft Teams. CCA completed a yearly reevaluation, conducted by a registered nurse, on July 8, 2022. As a result of this evaluation, on July 8, 2022, CCA notified the Appellant in writing that it was planning to reduce his PCA services from 24.50-day and 14-night hours/week from 24.25-day and 14- night hours/week, effective September 1, 2022. (Testimony, Exhibit 5).

Following the issuance of the August 27, 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 21, 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. His diagnoses include pulmonary hypertension, diabetes, osteoarthritis, GERD, PTSD, anxiety, and major depressive disorder. (Testimony, Exhibit 5, p. 55).

The Appellant had a prior authorization for PCA services that allowed for 80 minutes of grooming time per week was based on a November 6, 2020 PCA evaluation. (Testimony, Exhibit p. 84) That evaluation assessment states Appellant "requires assistance with nail care due to inability of left hand, no grasping and numbness to complete right hand safely. Podiatrist completes foot care. Consumer unable to complete hair, shaving and oral care after setup." It goes on to state that the Appellant, "fractured Right dominant hand during a fall and now has decreased grasping ability in bilateral hands." (Id.) There is no mention in that evaluation that the Appellant was receives shaves from a barber.

Based on that evaluation, it was determined that the Appellant needed 80 minutes per week of PCA time for grooming. The time was broken down as follows: 10 minutes one per week for nail care and 10 minutes once per day/seven days a week for other grooming tasks including hair care, shaving, deodorant application and washing of face. (Exhibit 5. p.96)

CCA testified that during the reevaluation on July 8, 2022, CCA modified the time requested for PCA services associated with grooming. Based on the July 8, 2022, the evaluator found that the Appellant continues to require assistance with nail care, application of lotion and haircare. (Testimony, Exhibit 5, p. 84) The reviewer included a note that “consumer continues to require assistance with grooming tasks [due to] left side weakness r/t cervical spine herniation, weak hand grasp and bending limitations. Consumer continues to require assistance with nail care, application of lotion and haircare. Consumers reports PCA cleans dentures. Consumer reports visiting barber regularly for facial shaving needs. Podiatrist continues to complete foot care.” (Id.)

Based on this assessment, CCA modified the Appellant’s grooming time since the PCA was not completing shaving services and his foot care was being taken care of by a podiatrist. Accordingly, the Appellant’s general grooming time was adjusted from 80 minutes per week down to 35 minutes per week. (Testimony, Exhibit 5. P. 83, 96)

Time for Tasks Guidelines for the MassHealth PCA Program provide an overview of the services performed within the grooming task and the amount of time allocated for those services based on the member’s needs. Grooming is defined “as maintaining personal hygiene, including set-up for grooming tasks (e.g. nail care, oral care, shaving, deodorant application, hair care, washing and drying hands and face). (Exhibit 5, p. 26.) The guidelines go on to break down time allotted for grooming based on whether a consumer needs minimal assistance, moderate assistance, maximum assistance, or total dependence. (Id.)

Levels of Physical Assistance are defined below:

Level	Description
Independent	Member requires 0% physical assistance to complete a task.
Minimal Assist	Member requires up to 25% physical assistance to complete a task.
Moderate Assist	Member performed part of activity but requires up to 50% physical assistance to complete a task.
Maximum Assist	Member involved and requires up to 75% physical assistance to complete task.
Total Dependence	Member requires full performance (100%) of activity by another.

See Exhibit 5, p. 43

The following are average time allotments for Grooming based on the level of assistance required by consumer:

Level	Average Time Estimates
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Minimal Assist	10 minutes per day for all grooming tasks
Moderate Assist	15 minutes per day for all grooming tasks
Maximum Assist	20 minutes per day for all grooming tasks
Total Dependence	25 minutes per day for all grooming tasks

Based on the Appellant's conditions, it has been determined as an individual who requires a moderate assist with the tasks of grooming. (Testimony, Exhibit 5. pg. 83, pg. 96) Based on the information that the Appellant was not being shaved by his PCA and his toenail care was being attended to by a podiatrist. CCA modified the Appellant's Grooming time from 80 minutes weekly to 35 minutes weekly. (Testimony, Exhibit p. 1, 2, 83).

The Appellant testified that he filed this appeal because the rationale for the reduction related to shaving is untrue, he vigorously denied that he goes to a barbershop several times a week to be shaved. (Testimony). The Appellant cited his numerous health conditions and the COVID-19 virus as evidence of why he would not congregate in a barbershop for shaving services. (Id.) The Appellant acknowledged that his nephew is a barber and will visit him in his apartment to shave him. (Id.) The task of shaving was understood by the Appellant to be conducted via straight edge razor, in which he offered he would not allow a PCA to shave him with a straight edge razor. (Id.) When the task of shaving was explained to include the use of a disposable razor or electric razor the Appellant explained that he would allow a PCA to shave him using a disposable razor. (Id.)

The Appellant testified that his PCA does not groom his toenails and that is exclusively done by a podiatrist. (Id.)

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, and is enrolled in the CCA's ICO program. (Testimony, Exhibit 5)
2. His diagnoses include pulmonary hypertension, diabetes, osteoarthritis, GERD, PTSD, anxiety, and major depressive disorder. (Testimony, Exhibit 5)
3. CCA completed a reevaluation of the Appellant, conducted by a registered nurse on July 8, 2022. (Testimony, Exhibit 5)
4. Based on the July 8, 2022 evaluation, CCA reduced the Appellant's PCA hours from 24.50 day hours, 14 night hours weekly to 24.25 day hours, 14 night hours per week. (Testimony, Exhibit 5)
5. The Appellant timely filed a level one internal appeal of this reduction 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 21, 2022, CCA issued a letter of denial to the Appellant, standing by its decision to reduce the Appellant's PCA assistance hours from 24.50 day hours and 14 night hours, to 24.25 day hours and 14 night hours effective September 1, 2022. (Testimony and Exhibit 5)
8. The Appellant subsequently filed a timely external appeal of CCA's level one appeal denial with the Board of Hearing. (Exhibit 2)
9. CCA determined that the Appellant needs less PCA assistance with his grooming tasks because he is being shaved by a barber and his toenail care is managed by a podiatrist.
10. The Appellant's nephew is a barber and attends to the Appellant's shaving needs. (Testimony)
11. The PCA does not shave the Appellant. (Testimony)
12. The Appellant's toenail/foot care is managed by his podiatrist. (Testimony, Exhibit 5)
13. The Appellant needs moderate assist with fingernail grooming. (Exhibit 5)
14. Prior to the July 8, 2022 reevaluation, the Appellant was allotted 10 minutes for nail care. (Exhibit 5)

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.

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.

There was only one area of modification at issue in this appeal and it relates to the task of grooming. Grooming is related to “maintaining personal hygiene, including set-up for grooming tasks (e.g. nail care, oral care, shaving, deodorant application, hair care, washing and drying hands and face).”

According to the guidelines, a moderate assist for grooming tasks is estimated to be approximately 15 minutes once per day. Additionally, grooming is defined “as maintaining personal hygiene,

including set-up for grooming tasks (e.g. nail care, oral care, shaving, deodorant application, hair care, washing and drying hands and face).

CCA does not disagree that the Appellant's physical condition requires a moderate assist with tasks related to grooming. CCA's rationale for the reduction in PCA time for grooming comes from uncontroverted information that the PCA is not assisting with specific tasks included in the grooming category, specifically the tasks of shaving and toenail grooming. Based on that information CCA has determined that PCA time should not be included for tasks that are not being completed by the PCA.

The Appellant does not disagree that he is not shaved by the PCA. Additionally, the Appellant acknowledges that his PCA does not groom his toenails because that task is completed by a podiatrist. Thus, it would follow that the reduction by CCA is appropriate since this is not work being conducted by the PCA.

However, upon closer inspection, the amount of the reduction is excessive. The Appellant previously received 10 minutes per week for nail care for his hands, as his foot care was handled by a podiatrist. At hearing, the reason offered by CCA for the reduction in grooming PCA time, hinged in part, on the fact that the Appellant's feet are tended to by a podiatrist. CCA did not dispute the Appellant needs assistance with his fingernails but stripped the Appellant of PCA time related to care and maintenance of his fingernails.

After a review of the evidence and applicable rules and guidelines, this Hearing Officer finds that the reduction of time related to the care and maintenance of his fingernails was improper. The Appellant still needs assistance with grooming his fingernails and there was no evidence offered by CCA why they would strip the 10-minute allotment for nail care, as 10 minutes for nail care was determined to be appropriate under the November 2020 prior authorization that included the proviso that the Appellant was having his foot care tended to by a podiatrist. With respect to that modification, the appeal is APPROVED.

Under a previous prior authorization, the Appellant received 10 minutes once per day, 7 days per week, for the rest of his grooming care including application of lotion, oral care, shaving, deodorant application, hair care, washing and drying hands and face.

Based on the evidence that the Appellant's shaving needs were being met by a barber, CCA reduced the Appellant's grooming tasks to only 5 minutes once per day, 7 days per day week, totaling 35 minutes of PCA assist with grooming. As noted, CCA did not dispute that the Appellant needs moderate assistance with grooming tasks.

The evidence proffered during the hearing does not support a finding that CCA erred by reducing PCA time for daily grooming tasks from 10 minutes per day/7 days a week to 5 minutes per day/7 days per week. The evidence before this Hearing Officer is that the Appellant does not receiving shaving assistance from his PCA. The November 2020 prior

authorization, that allotted 10 minutes daily of PCA time for grooming tasks, included the task of shaving. Based on the most recent evaluation and the disclosure that the Appellant has not been receiving assistance for shaving from his PCA, the 5 minute per day reduction is warranted.

For those reasons, this part of the modification appeal is DENIED.

Order for MassHealth

CCA shall restore 10 minutes once per week of PCA time related to the task of nail care/grooming, retroactive to the September 1, 2022 effective date through the duration of the current authorization appeal. CCA will rescind the August 27, 2022 notice and November 21, 2022 notice and issue a new notice which includes the additional 10 minutes/once per week of PCA time for the purpose of nail care/grooming, the notice should 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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

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