

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2209216

Decision Date: 3/6/2023

Hearing Date: 01/19/2023

Hearing Officer: Thomas Doyle

Record Open to:

Appearance for Appellant:



**Appearance for Senior Care
Organization (SCO):**

Dr. Cheryl Ellis, United Health Care,
Medical Director, Senior Care Options

Interpreter:



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	PCA hours
Decision Date:	3/6/2023	Hearing Date:	01/19/2023
SCO's Rep.:	Dr. Cheryl Ellis	Appellant's Rep.:	Pro se, with daughter
Hearing Location:	Remote (phone)	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 December 1, 2022, Untied Healthcare (UHC), a MassHealth Senior Care Organization (SCO), modified the appellant's prior authorization (PA) request for day personal care attendant (PCA) services from the requested 30 hours, day PCA assistance per week, to 17 hours, day PCA assistance per week because UHC determined that time requested for assistance with certain activities did not meet MassHealth nor UCH requirements for prior authorization. (130 CMR 422.403; 422.410; 450.204; Ex.1; Testimony). The appellant filed this appeal in a timely manner on December 10, 2022 (130 CMR 610.015; Ex. 2). Modification of a PA request for PCA services is valid grounds for appeal. (130 CMR 610.032(B)).

Action Taken by SCO

UHC modified appellant's day PCA hours from 30 hours a week to 17 hours a week.

Issue

The appeal issue is whether UHC was correct, pursuant to 130 CMR 422.403; 422.410; 450.204, in modifying appellant's request for personal care attendant services.

Summary of Evidence

The appellant represented herself but was accompanied by her daughter, who also acted as appellant's Spanish interpreter. Both appeared and testified at the hearing by telephone. UHC was represented by an Dr. Cheryl Ellis, Director of Long-Term Services for UHC. Appellant is a female in her mid-80's with multiple diagnosis including coronary artery disease, severe asthma, diabetes, hypertension, history of gastrointestinal bleed, osteoporosis and Alzheimer's dementia. Currently, there is no aid pending. Testimony shows appellant came to UHC with PCA hours already in place. There were two previous telephonic evaluations of appellant's PCA hours due to Covid. The last evaluation, in October 2022, was an in-person assessment and is the subject of this appeal. As a result of this in person assessment, UHC modified appellant's PCA hours from 30 hours a week for daytime to 17 hours a week for daytime.¹

The representative for UHC stated that appellant came to UHC with her hours already in place and UHC did not have any specific information as to the breakdown or allocation of hours for each ADL and IADL. 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" 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%.

Daughter of appellant testified she lives with appellant and that appellant needs more hours, not a reduction of hours. She said the evaluator was only present for less than an hour and only spoke English. She said a Spanish speaker should have conducted the evaluation. Her mother is more elderly and is in pain, which requires more time to get appellant ready. Appellant has Alzheimer's' dementia along with other physical medical problems. Appellant uses a walker and a cane. Appellant requested the PCA hours be reinstated but did not provide any evidence as to any specific times it took to perform each ADL or IADL.

Findings of Fact

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

1. Appellant became a member of UHC from another health provider in January 2020. She had PCA hours of 30 hours for daytime per week and 14 hours nighttime per week already in place upon joining UHC. UHC did not know how the 30 daytime hours were allocated. (Testimony). In August 2020, UHC conducted a phone evaluation and based upon reports by appellant or her representative, 16 day hours a week and 14 night hours were deemed appropriate for PCA hours. In July 2021, a second phone evaluation was conducted, also

¹ Fourteen hours a week for nighttime hours remained the same.

based upon appellant or her representative's report, and UHC found 11 day hours a week and 14 night hours was appropriate for PCA hours. No changes were made to appellant's PCA hours until after the face-to-face October 2022 reevaluation. (Testimony).

2. On October 12, 2022, an in-home assessment was completed by a registered nurse for UHC. (Ex. 5, pp, 344-352; Testimony). As a result, UHC reduced appellant's PCA hours from 30 hours a week daytime to 17 hours a week daytime. Night hours remained the same. (Ex. 1, p. 2; Ex. 5, p. 355; Testimony).
3. On or around November 29, 2022, appellant appealed the reduction of her PCA hours. On December 1, 2022, UHC denied appellant's appeal. (Ex. 1).
4. Appellant is a female in her mid-80's. She lives with her daughter who is in her early 50's. (Testimony).
5. Appellant has the following diagnosis: coronary artery disease, severe asthma, diabetes, hypertension, history of gastrointestinal bleed, osteoporosis, Alzheimer's dementia, mood disturbance and anxiety. (Ex. 4; Ex. 5, p. 344; Testimony).
6. For bed repositioning, appellant was found to be independent. (Ex. 5, p. 344).
7. For walking/ambulation, in the home, appellant was observed to be independent with use of cane. (Ex. 5, p. 344).
8. Appellant was found to need extensive assistance for walking/ambulation outside the home. She needs assistance maneuvering stairs because she is unsteady. She needs under arm support to avoid falling. UHC allowed PCA assistance for 2.5 minutes a day, 1 day a week for 5 minutes a week. (Ex. 5, p. 345).
9. Appellant is independent for transfers in and out of bed, chair and sofa. (Ex. 5, p. 346).
10. Appellant needs maximum assistance with bathing, upper and lower body. Hours for PCA were approved at 35 minutes a day, 7 days a week. (Ex. 5, p. 346).
11. Bathing transfer for in and out of bath/shower hours for PCA was approved for 10 minutes a day, 7 days a week. (Ex. 5, p. 346).
12. Appellant requires maximal assistance with washing and drying hair. Hours for PCA assistance were approved at 10 minutes a day, 4 days a week. (Ex. 5, p. 346).
13. Appellant needs extensive assistance with personal hygiene for washing face, hands and teeth and combing hair. Hours for PCA assistance were approved at 6 minutes a day, 7 days a week. (Ex. 5, p. 347).
14. Appellant needs maximal assistance with dressing and undressing both upper and lower body.

Both activities were given PCA hours of 9 minutes a day, 7 days a week. (Ex. 5, p. 347).

15. Appellant is independent with eating. (Ex. 5, p. 347-348).
16. Appellant needs maximal assistance with toileting, including toilet hygiene, clothing management, and changing absorbent products. PCA night hours allowed due to appellant being incontinent with urine. PCA hours approved at 20 minutes a day, 7 days a week. (Ex. 5, p. 348).
17. Appellant has great difficulty taking her medications. Appellant suffers from cognitive decline and can not self-manage her medication. PCA hours were approved at 12 minutes a day, 7 days a week. (Ex. 5, p. 348).
18. Appellant has some difficulty with meal preparation. Arthritis effects appellant's hands and she can not stand for long periods of time or safely use utensils. PCA hours were approved for breakfast, 15 minutes a day, 7 days a week; lunch at 25 minutes a day for 7 days a week; dinner at 45 minutes a day, 7 days a week. (Ex. 5, p. 349).
19. Appellant has great difficulty with laundry, which is done in home. Appellant has support residing in home. PCA hours approved at 30 minutes a week. (Ex. 5, p. 349).
20. Appellant has great difficulty with housekeeping. She has support residing in home and willing to help. PCA hours were approved at 45 minutes a week. (Ex. 5, p. 349-350).
21. Appellant has great difficulty in shopping. She tells worker what she wants at store. Appellant does not go shopping with worker due to various medical conditions. PCA hours were approved at 20 minutes a week for shopping. (Ex. 5, p. 350).
22. Appellant has some difficulty making inbound and outbound phone calls. PCA hours were approved for 30 minutes a week. (Ex. 5, p. 350).
23. Appellant needs escorting to medical appointments. She needs assistance with entering and exiting vehicle. Approximately 10 appointments a year; 30 minutes a week times 52 weeks a year. This averages out to 2.5 hours per appointment. (Ex. 5, p. 350-351; Testimony).

Analysis and Conclusions of Law

Obtaining Services When Enrolled in a SCO. When a member chooses to enroll in a senior care organization (SCO) in accordance with the requirements under 130 CMR 508.008, the SCO will deliver the member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, each SCO is required to provide evidence of its coverage, including a complete list of participating providers, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to covered services such as specialty, behavioral health, and long-term-care services.

(130 CMR 508.008(C)).

Senior Care Organization (SCO) – a managed care organization that participates in MassHealth under a contract with the MassHealth agency to provide coordinated care and medical services through a comprehensive network to eligible members 65 years of age or older. SCOs are responsible for providing enrolled members with the full continuum of Medicare- and MassHealth-covered services.

(130 CMR 610.004).

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):...

- (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;

(130 CMR 610.032(B)(2)).

The appellant exhausted the internal appeal process offered through UHC, and thus is entitled to a fair hearing pursuant to the above regulations. As MassHealth's agent, UHC is required to follow MassHealth laws and regulations pertaining to a member's care.

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).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for prior authorization to be approved. 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) A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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.

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

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A), (B), (C)).

Activities of Daily Living and Instrumental Activities of Daily Living:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 PCA services; and

(c) other special needs approved by the MassHealth agency 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 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.

(130 CMR 422.410).

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.

(130 CMR 422.412).

In this case, the appellant's SCO, UHC, approved her for 17 hours of daytime and 14 nighttime PCA services per week, which was a decrease from the time allocated to appellant from her previous health provider. As explained at hearing, the reduction was the result of an in-person assessment at which a UHC nurse evaluated the appellant's functional abilities. 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.

Daytime PCA Hours:

Bed Repositioning: UHC did not authorize any time for this task on the basis that the appellant can reposition herself independently in bed and was observed changing her position once in the bed side to side independently. (Ex. 5, p. 345). The appellant offered no argument or documentary evidence that this finding of independence was incorrect. On this record, there is a lack of sufficient evidence of medical necessity to warrant the authorization of any time for assistance with this task.

Walking/Ambulation: UHC did not authorize any time for this task on the basis that the appellant can independently ambulate in the home. Appellant was observed at the home evaluation ambulating independently with a cane. The appellant offered no argument or documentary evidence that this finding of independence was incorrect. On this record, there is a lack of sufficient evidence of medical necessity to warrant the authorization of any time for assistance with this task. UHC authorized PCA hours for ambulation outside the home. It was reported that appellant, while independently ambulating outside, uses her cane and needs hands on assistance with stairs. She is unsteady and can not go up and down stairs without under arm support to avoid falling. It was observed appellant uses her cane to maintain her balance. UHC authorized 5 minutes per week for the PCA to provide extensive assistance with this task. The appellant did not offer any specific reason or evidence why this time would be inadequate to meet the appellant's needs, nor is any apparent.

Transfers: UHC did not authorize any time for this task on the basis that the appellant is independent in this task. (Ex. 5, p. 346). The appellant did not offer any evidence to contradict this finding.

Bathing: UHC authorized 245 minutes per week for the PCA to provide maximal assistance with washing appellant's upper and lower body. For bathing transfers, 70 minutes a week was allotted to help appellant in and out of the bathtub. (Ex. 5, p. 346; Testimony). The appellant did not offer any specific reason why these times would be inadequate to meet the appellant's needs, nor is any apparent.

Personal Hygiene/Hair: UHC authorized 40 minutes per week of daytime PCA assistance to provide maximal assistance with washing hair (10 minutes, 4 days per week). (Ex. 5, p. 346-347). Regarding personal hygiene, UHC authorized 45 minutes a week for washing face, hands and teeth and combing appellant's hair. (Ex. 5, p. 347). The appellant did not offer any specific reason or documentary or testimonial evidence why these times would be inadequate to meet the appellant's needs.

Dressing/Undressing: UHC authorized 130 minutes per week of daytime PCA assistance with dressing/undressing to provide maximal assistance (9 minutes per day, 7 days a week, for help with upper body dressing and undressing and 9 minutes per day, 7 days a week, for help with lower body dressing and undressing). Appellant offered no evidence contradicting the adequacy of these time frames.

Eating: UHC did not authorize any time for this task on the basis that the appellant can independently eat. Appellant offered no evidence contradicting the adequacy of this finding.

Toileting: UHC authorized 140 minutes a week at 20 minutes a day, 7 days a week with maximal assistance due to incontinence of the bladder. Appellant offered no evidence contradicting the adequacy of these times.

Medication: Appellant was found to have great difficulty with this task. UHC authorized 105 minutes per week of daytime PCA assistance to allow time for the PCA to prefill the appellant's pill box and administer medication. This was allowed due to appellant's cognitive decline, making her unable to self manage her medications.

Meal Preparation: UHC authorized 85 minutes per week for daytime PCA assistance with meal preparation, finding appellant had some difficulty with this task. UHC authorized time for assistance with breakfast (15 minutes), lunch (25 minutes), and dinner (45 minutes). In response to these times, appellant's daughter said it was not possible. (Testimony). Appellant nor her daughter did not offer any specific evidence as to why 85 minutes per week is insufficient to meet her needs. The appellant has not offered sufficient evidence to justify more time.

Laundry: UHC authorized 30 minutes per week for daytime PCA assistance with this task, which they found appellant had great difficulty performing. The appellant did not offer any further evidence to justify any additional increase.

Housekeeping: UHC found appellant had great difficulty with this task so they authorized 45 minutes per week for daytime PCA assistance with this task. The appellant did not offer any further evidence to justify any additional increase.

Shopping: UHC found appellant had great difficulty with this task so they authorized 20 minutes per week for daytime PCA assistance with this task. The appellant has not demonstrated that 20 minutes per week for daytime PCA assistance with shopping is insufficient.

Phone: UHC found appellant has some difficulty with this task and authorized 30 minutes a week for PCA assistance. No argument was made and no evidence was offered by appellant that the time allotted was insufficient.

Medical Appointments: UHC calculated 10 appointments a year and allowed 30 minutes a week for this task. Appellant did not challenge this finding and offered no evidence to contradict the allotted time.

Nighttime PCA Hours:

Toileting nighttime hours were allotted at 2 hours per night, 14 minutes a week. Appellant did not challenge this allotment of time.

The appellant has the burden "to demonstrate the invalidity of the administrative determination."

Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Appellant's daughter testified and the sum and substance of her testimony was appellant needed more time, not less. She argued appellant was aging and needed more help. The daughter stated the nurse evaluator only came for a few minutes. She testified her mother needed an evaluator who spoke Spanish. The record shows the daughter acted as interpreter for her mother at the evaluation. (Ex. 5, p. 344). There was no testimony from the daughter as to specific times needed relating to each task in the ADL's and IADL's. Through her daughter, appellant testified she wanted her original 30 hours reinstated. Appellant did not offer any specific challenges to the times allotted by UHC for each ADL and IADL.

Neither the daughter nor appellant made any substantive argument refuting the accuracy of the hours allocated by UHC. Appellant did offer a letter from a physician assistant that appellant has been seeing since 2015. (Ex. 4). The medical provider states in her letter that reducing PCA would be detrimental to appellant's health. The letter provides no specifics regarding the level of assistance needed by appellant for each task in the ADL's and IADL's, therefore I give it no weight to the letter.

Based upon the evidence and record before me, appellant has not met her burden and this appeal is denied.

Order for UHC:

None.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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