# Office of Medicaid
# BOARD OF HEARINGS

**Appellant Name and Address:**

[redacted]

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| **Appeal Decision:** | Denied | **Appeal Number:** | 2209683 |
| **Decision Date:** | 3/20/2023 | **Hearing Date:** | 2/1/2023 |
| **Hearing Officer:** | Cynthia Kopka | | |

**Appearance for Appellant:**
[redacted]

**Appearance for Respondent:**
Cassandra Horne, Appeals and Grievances Manager
Jeremiah Mancuso, RN
Kaley Ann Emery, Appeals Supervisor

*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

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| **Appeal Decision:** | Denied | **Issue:** | Adult day health |
| **Decision Date:** | 3/20/2023 | **Hearing Date:** | 2/1/2023 |
| **Respondent's Rep.:** | Cassandra Horne, Jeremiah Mancuso, Kaley Ann Emery | **Appellant's Rep.:** | Pro se |
| **Hearing Location:** | Quincy (remote) | **Aid Pending:** | Yes |

## Authority

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

## Jurisdiction

By notice dated December 29, 2022, Commonwealth Care Alliance (CCA), a MassHealth Integrated Care Organization (ICO), denied Appellant's Level I appeal for prior authorization of adult day health services. (Exhibit 1; 130 CMR 404.405) Appellant filed this appeal in a timely manner on December 29, 2022. (Exhibit 2; 130 CMR 610.015(B)). Denial of assistance is a valid basis for appeal. (130 CMR 508.010, 130 CMR 610.032(B)). Appellant was entitled to retain her previous level of benefits pending the outcome of the hearing. (130 CMR 610.036).

## Action Taken by Respondent

CCA denied Appellant's Level I appeal for prior authorization of adult day health services.

## Issue

The appeal issue is whether CCA was correct in denying Appellant's Level I appeal for prior authorization of adult day health services.

## Summary of Evidence

CCA's representatives, including an appeals and grievances supervisor, nurse review manager, and

appeal supervisor appeared by phone and provided written materials in support. Exhibit 4 and 5. A summary of testimony and written materials follows. Appellant has been enrolled in CCA's One Care program since September 1, 2022. The request on appeal was for adult day health services (ADH) five days per week with transportation from December 1, 2022 through May 31, 2023. On November 30, 2022, CCA denied Appellant's request. Appellant's provider filed an appeal on December 2, 2022. Appellant qualified for care to continue through the Level I appeal process and aid pending through the Board of Hearings (BOH) Level II appeal. The benefits would continue until either March 15, 2023 or when BOH rendered an appeal decision, whichever was later.

In the request for appeal, Appellant's provider told CCA that at the ADH center, Appellant receives blood pressure and diabetes monitoring and is on a weight loss program that has been successful. The provider stated that Appellant is diagnosed with depression and anxiety and would be home alone during the day without the program. Finally, the provider stated that the center helps Appellant with her medication management and works with her psychiatrist. (Exhibit 4 at 66).

Appellant's request was reviewed by a medical director. On December 27, 2022, CCA denied Appellant's Level I appeal. On December 29, 2022, CCA notified Appellant in writing of the denial. (*Id*. at 148-153).

CCA's nurse review manager testified that based on a Minimum Data Set (MDS) Assessment done by a CCA nurse on November 3, 2022, Appellant is independent with all activities of daily living (ADLs). (Exhibit 4 at 82-146). CCA's nurse reviewer noted that Appellant requires some assistance with instrumental activities of daily living (IADLs), but this is not a qualifying criterion. CCA referred to the medical necessity guideline. Other identified skilled needs, such as blood pressure monitoring and oxygen orders, did not appear to be on a daily basis but rather as needed (or PRN). (Exhibit 4 at 82-146).

Appellant and her representative, the RN nurse manager of the ADH center, appeared by phone and testified as follows. Appellant likes going to the center and it keeps her busy. She is with people her own age and it helps with her anxiety and depression. Appellant's representative testified that Appellant lights up when she enters the center. Without the center, Appellant would be home alone all day. Appellant does not drive. The center offers structure and activities that Appellant would not be able to follow at home. At the center, Appellant does arts and crafts, exercises, sings and dances, watches television, plays Bingo and games, takes trips, eats meals and snacks, and socializes. Appellant has been visiting the center since November 2018. During the times the center was shut down for Covid, Appellant testified that she did not deteriorate medically, but she was bored and had depression. Appellant credits the nurses and aides, the other members, and the activities for keeping her depression and anxiety at bay. The center is important for Appellant's mental status. Appellant requires management and evaluation of her care plan to see if her mood is stable as well as medication monitoring. Appellant does not take medications at the center, but rather takes them before going in or in the evening after she gets home.

Appellant did not dispute that she is independent with ADLs. Appellant mentioned that she has arthritis in her foot for which she is going to get a brace and either a cane or a walker. She might also need surgery on the foot. Appellant is able to prepare easy meals but nothing difficult.

Appellant would not be eligible for alternatives offered by Elder Services due to her age.

# Findings of Fact

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

1. Appellant has been enrolled in CCA's One Care program since September 1, 2022.

2. On November 8, 2022, Appellant's provider submitted a request for ADH five days per week with transportation, for dates of service December 1, 2022 through May 31, 2023. (Exhibit 4 at 18).

3. On November 30, 2022, CCA denied Appellant's request for ADH five days per week with transportation. (*Id*. at 58).

4. Appellant's provider filed an appeal on December 2, 2022, and Appellant was eligible to retain her previous level of benefits during the pendency of the appeal. (*Id*. at 66).

5. In its request for appeal, Appellant's provider told CCA that the ADH center monitors Appellant's blood pressure and diabetes and has her on a weight loss program that has been successful. The provider stated that Appellant is diagnosed with depression and anxiety and would be home alone during the day without the program. Finally, the provider stated that the center helps Appellant with her medication management and works with her psychiatrist. (*Id*).

6. On December 29, 2022, CCA notified Appellant that her Level I appeal was denied because Appellant is independent with her ADLs and does not have a daily skilled need that requires monitoring by a nurse. (*Id*. at 148-153).

7. Appellant filed a timely appeal with the Board of Hearings on December 29, 2022. (Exhibit 2).

8. Per the MDS assessment done November 3, 2022, Appellant is independent with ADLs and requires some assistance with IADLs. (*Id*. at 90).

9. Appellant does not receive daily blood pressure monitoring or assistance with medications as the ADH center.

# Analysis and Conclusions of Law

MassHealth members younger than 65 years old, except those excluded under 130 CMR 508.004, must enroll in the Primary Care Clinician (PCC) Plan or a MassHealth-contracted MCO available for their coverage type. (130 CMR 450.117(A) and 130 CMR 508.002). MassHealth

managed care options include an integrated care organization (ICO) for MassHealth Standard and CommonHealth members who also meet the requirements for eligibility set forth under 130 CMR 508.007. Members who participate in an ICO obtain all covered services through the ICO. (130 CMR 450.117(K)).

A member may enroll in an ICO if he or she meets the following criteria:

> (A) Eligibility.
>
> (1) In order to be eligible to enroll in an integrated care organization (ICO), a MassHealth member must meet all of the following criteria, and may not be enrolled or concurrently participate in any of the programs or plans listed in 130 CMR 508.007(F):
>
> (a) be 21 through 64 years of age at the time of enrollment;
> (b) be eligible for MassHealth Standard as defined in 130 CMR 450.105(A): *MassHealth Standard* or MassHealth CommonHealth as defined in 130 CMR 450.105(E): *MassHealth CommonHealth*;
> (c) be enrolled in Medicare Parts A and B, be eligible for Medicare Part D, and have no other health insurance that meets the basic-benefit level as defined in 130 CMR 501.001: *Definition of Terms*; and
> (d) live in a designated service area of an ICO.

(130 CMR 508.007).

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. (130 CMR 508.007(C)). ICO members may appeal a determination made by an ICO to the Board of Hearings pursuant to 130 CMR 508.010.

CCA's One Care Plan is a MassHealth ICO. CCA's One Care Member Handbook, Exhibit 5, provides which services the plan covers, including Adult Day Health (ADH) which requires prior authorization. (Exhibit 5 at 50). MassHealth covers ADH for clinically eligible members who have received prior authorization for the service. (130 CMR 404.405(A), 130 CMR 404.406). As part of the prior authorization process, members seeking ADH must undergo a clinical assessment to assess their needs and eligibility. (130 CMR 404.406(A)). Prior authorization determines the medical necessity for ADH services. (130 CMR 404.406(B)(2)).

MassHealth will pay for ADH provided to members who meet all of the following clinical eligibility criteria set forth in 130 CMR 404.405(A):

> (1) ADH has been ordered by the member's PCP;
> (2) The member has one or more chronic or post-acute medical, cognitive, or mental health condition(s) identified by the member's PCP that require active

monitoring, treatment or intervention and ongoing observation and assessment by a nurse, without which the member's condition will likely deteriorate;
(3) The member requires **one or both of the following be provided** by the ADH program:
(a) at least one skilled service listed in 130 CMR 404.405(B); or
(b) at least daily or on a regular basis hands-on (physical) assistance or cueing and supervision, throughout the entire activity, with one or more qualifying ADLs listed in 130 CMR 404.405(C) when required at the ADH program as determined clinically appropriate by the ordering PCP and the ADH program nurse developing the plan of care.

Skilled services are those services ordered by a physician that fall within the professional disciplines of nursing, physical, occupational, and speech therapy. Examples of skilled services are listed in 130 CMR 404.405(B) and include:

(1) intravenous, intramuscular, or subcutaneous injection, or intravenous feeding;
(2) nasogastric-tube, gastrostomy, or jejunostomy feeding;
(3) nasopharyngeal aspiration and tracheostomy care. However, long-term care of a tracheotomy tube does not, in itself, indicate the need for skilled services;
(4) treatment and/or application of dressings when the physician has prescribed irrigation, the application of medication, or sterile dressings of deep decubitus ulcers, other widespread skin disorders, or care of wounds, when the skills of a registered nurse are needed to provide safe and effective services (including, but not limited to, ulcers, burns, open surgical sites, fistulas, tube sites, and tumor erosions);
(5) administration of oxygen on a regular and continuing basis when the member's medical condition warrants skilled observation (for example, when the member has chronic obstructive pulmonary disease or pulmonary edema);
(6) skilled-nursing intervention including observation, evaluation or assessment, treatment and management to prevent exacerbation of one or more chronic medical and/or behavioral health conditions at high risk for instability. Intervention must be needed at frequent intervals throughout the day;
(7) skilled nursing for management and evaluation of the member's care plan when underlying conditions or complications require that only a registered nurse can ensure that essential unskilled care is achieving its purpose. The complexity of the unskilled services that are a necessary part of the medical treatment must require the involvement of skilled nursing personnel to promote the member's recovery, safety and the stabilization of the member's complex social determinants of health;
(8) insertion, sterile irrigation, and replacement of catheters, care of a suprapubic catheter, or, in selected residents, a urethral catheter. A urethral catheter, particularly one placed for convenience or for control of incontinence, does not justify a need for skilled-nursing care. However, the insertion and maintenance of a urethral catheter as an adjunct to the active treatment of disease of the urinary tract may justify a need for skilled-nursing care. In such instances, the need for a

urethral catheter must be documented and justified in the member's medical record (for example, cancer of the bladder or a resistant bladder infection);
(9) Administration oversight, and management of medication by a licensed nurse including monitoring of dose, frequency, response and adverse reactions;
(10) evaluation, implementation, oversight and supervision by a licensed nurse of a behavior management plan and staff intervention required to manage, monitor, or alleviate the following types of behavior:

(a) wandering: moving with no rational purpose, seemingly oblivious to needs or safety; ongoing exit seeking behaviors; or elopement or elopement attempts;

(b) verbally abusive behavioral symptoms: threatening, screaming, or cursing at others;

(c) physically abusive behavioral symptoms: hitting, shoving, or scratching;

(d) socially inappropriate or disruptive behavioral symptoms: disruptive sounds, noisiness, screaming, self-abusive acts, disrobing in public, smearing or throwing food or feces, rummaging, repetitive behavior, eating non-food items, or causing general disruption, including difficulty in transitioning between activities;

(e) inability to self-manage care;

(f) pattern of disordered thinking, impaired executive functioning, confusion, delusions or hallucinations, impairing judgment and decision-making leading to lack of safety awareness and unsafe behavior and requiring frequent intervention during the day to maintain safety.

(11) medically necessary measurements of intake and output based on medical necessity to monitor and manage a chronic medical condition;
(12) gait evaluation and training administered or supervised by a registered physical therapist while at the ADH provider for members whose ability to walk has recently been impaired by a neurological, muscular, or skeletal abnormality following an acute condition (for example, fracture or stroke). The plan must be designed to achieve specific goals within a specific time frame;
(13) certain range-of-motion exercises may constitute skilled physical therapy only if they are part of an active treatment plan for a specific state of a disease that has resulted in restriction of mobility (physical-therapy notes showing the degree of motion lost and the degree to be restored must be documented in the member's medical record);
(14) hot pack, hydrocollator, paraffin bath, or whirlpool treatment will be considered skilled services only when the member's condition is complicated by a circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications; and
(15) physical, speech/language, occupational, or other therapy that is provided as part of a planned program that is designed, established, and directed by a qualified therapist. The findings of an initial evaluation and periodic reassessments must be documented in the member's medical record. Skilled therapeutic services must be ordered by a physician and be designed to achieve specific goals within a given time frame.

The qualifying ADLs for ADH are set forth in 130 CMR 404.405(C):

> (1) bathing—a full body bath or shower or a sponge (partial) bath which may include washing and drying of face, chest, axillae (underarms), arms, hands, abdomen, back and peri-area that may include personal hygiene such as combing or brushing of hair, oral care, shaving, and when applicable applying make-up;
> (2) toileting—member is incontinent (bladder or bowel) or requires scheduled assistance or routine catheter or colostomy care;
> (3) transferring—member must be assisted or lifted to another position;
> (4) mobility (ambulation) —member must be physically steadied, assisted or guided in mobility, or is unable to self-propel a wheelchair appropriately without the assistance of another person; and
> (5) eating—member requires constant supervision and cueing during the entire meal or physical assistance with a portion or all of the meal.

For Appellant to be eligible for MassHealth payment of ADH, she must meet the eligibility criteria set forth above. There was no dispute that Appellant meets the criteria of 130 CMR 404.405(A)(1) and (2). MassHealth denied Appellant's prior authorization request because based on the clinical assessment, Appellant did not meet either prong of 130 CMR 404.405(A)(3). Specifically, Appellant did not have a skilled need, nor does she require daily hands-on, physical assistance, cueing, or supervision of one or more ADLs. Appellant did not dispute these findings, but argued that she receives significant medical benefit from attending ADH.

Appellant did not establish that CCA was incorrect to determine that she did not meet clinical eligibility for ADH, and accordingly this appeal is denied. However, Appellant is encouraged to resubmit the authorization request if she has a clinical change of status that meets the requirements, such as when she undergoes surgery.

# Order for CCA

Remove aid pending.

# 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

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

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