

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2300507
Decision Date:	4/19/2023	Hearing Date:	03/10/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Interpreter:
ITI - Zully

Appearance for Respondent:
Kaley Ann Emery – Appeals Supervisor
Jeremiah Mancuso - Clinical RN Appeals and
Grievance Manager
Jessica Hebert – Observing



*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:	Managed Care – Companion Services
Decision Date:	4/19/2023	Hearing Date:	03/10/2023
CCA’s Rep.:	Kaley Ann Emery; Jeremiah Mancuso	Appellant’s Rep.:	Pro se
Hearing Location:	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

Through a Denial of Level 1 Appeal Notice dated January 10, 2023, Commonwealth Care Alliance (“CCA”) denied the appellant’s internal appeal regarding companion services because it determined the requested level of services were not medically necessary. (Exhibit 4; Exhibit 7, pp. 113-118.) This timely appeal was filed telephonically on January 20, 2023. (Exhibit 2; 130 CMR 610.015(B).) A managed care contractor’s decision to deny or provide limited authorization of a requested service is grounds for appeal. (130 CMR 610.032(B).)

Despite appealing within 10 days of the Level 1 Appeal Denial, CCA had not provided the appellant with “Aid Pending” protection pursuant to 130 CMR 610.036. This matter was addressed at the hearing, and CCA agreed to retroactively restore 18 hours of companion services per week through the conclusion of this appeal process.

Action Taken by Commonwealth Care Alliance

CCA reduced the number of companion services from 18 hours to seven hours per week.

Issue

The appeal issue is whether CCA was correct, pursuant to 130 CMR 630.000 and 450.204, in determining that the appellant required fewer companion hours than he had been receiving.

Summary of Evidence

CCA's One Care program is a managed-care plan that helps coordinate both Medicare and Medicaid benefits for enrolled members. The appellant is under the age of 65 and has been enrolled since 2013. On or around November 3, 2022, Golden Years Home Services submitted a prior authorization request on the appellant's behalf seeking 18 hours per week of companion services for the period of January 1, 2023 through June 30, 2023. (Exhibit 7, pp. 1-3, 53.)

On or around November 14, 2022, CCA informed the appellant that, starting January 1, 2023, his companion services would be reduced to seven hours per week. CCA explained that this reduction would occur because the companion services were requested for assistance with housekeeping, laundry, cooking, and transportation to appointments. However, the appellant was approved for 35 hours per week of personal care attendant ("PCA") services that included time for housekeeping, cooking, and laundry. Therefore, CCA felt that seven hours per week was more than sufficient to provide transportation time. CCA's decision emphasized that companion services are not covered for recreation. (Exhibit 7, pp. 67-68.)

The appellant had historically received 18 hours of companion services per week. He testified through an interpreter that he needs his companion in order to drive him to appointments because his PCA does not have a driver's license. His companion is also a person to whom he vents, and she helps him manage his anxiety by talking with him or taking him out for walks. He agreed that his companion was providing medical checks on his anxiety that prevented his condition from worsening or exacerbating. Furthermore, he testified his companion could no longer be his companion at the reduced hours authorized. He testified that Golden Years Home Services had not sent out a companion for over a month since his hours had been reduced; as a result, he had missed multiple medical appointments.¹ He felt that this was worsening his anxiety. Prior to the hearing, the appellant also submitted a letter from his psychologist, which states that he has "current diagnoses include[ing] PTSD and Major Depressive Disorder." Otherwise, the letter was styled as support for the approval of transportation services. (Exhibit 5.)

CCA's representatives responded that companions are not meant to be providing mental health counseling or entertainment. The appellant objected to the characterization of the companion as providing mental health counseling, rather he felt that it was stress release through socialization, which is a covered companion service. CCA's representative agreed that socialization is covered but responded that 18 hours of companion services is excessive.

The appellant was asked to walk through all of the time that was necessary for companion services in an average week. He testified that he has a couple medical appointments each week, which take between one and two hours. Sometimes he goes to the emergency department, which can last five hours. He also has a couple of acupuncture appointments every week, and he will be starting

¹ CCA explained that the appellant has a care partner who helps coordinate his care. He should reach out to his care partner to discuss the provider's inability to staff a companion, and they could help him change providers if his current provider could not staff his care.

physical therapy two-to-three times per week for a few weeks. There are other tasks around the house that need to be done, such as laundry, cooking, and cleaning. The appellant was reminded that his PCA is authorized time for cooking, cleaning, and laundry. If he wanted, it is possible that CCA could adjust the PCA authorization to allow that time to be assigned to the companion, but otherwise time would not be authorized for both the companion and the PCA to provide chore services. The appellant was adamant that he did not want any responsibilities reassigned.

He also testified that his companion took him outside when he was stressed. He testified that he goes for a walk for 30 minutes to an hour every day if he is feeling up to it with his walker. He also testified that he needs assistance paying his bills. He identified water, electricity, phone, and cable bills, which he insists on paying in person. Each payment can take an hour or more. It was agreed that each physical therapy or acupuncture appointment could be estimated at a maximum to take two hours, though CCA's representatives felt that this estimation was excessive. Finally, the appellant's companion would call him daily to check in on him and make sure he took his medications. CCA responded that the PCA is also paid for providing medication assistance, and that this is not a task for which a companion can be compensated.

The appellant agreed that 18 hours per week for companion services did seem excessive, given that the time he described totaled between eight and 10 hours per week. He felt that 17 hours per week would be an appropriate reduction. CCA's representative was amenable to an increase in the companion time but argued that companion time approved needs to be connected to compensable services such as transportation and socialization. CCA agreed that the time the appellant described for transportation and walking would be compensable.

Findings of Fact

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

1. The appellant suffers from PTSD and depression. (Exhibit 5.)
2. The appellant has been enrolled in CCA's One Care program since 2013, and he has previously received 18 hours per week of companion services. (Exhibit 7, pp. 1-3; testimony by CCA's representatives.)
3. The appellant's companion service provider, Golden Years Home Services, submitted a prior authorization request on or around November 3, 2022 seeking 18 hours per week of companion services for the period of January 1, 2023 through June 30, 2023. (Exhibit 7, p. 53.)
4. CCA authorized seven hours of companion services through a notice on or around November 14, 2022. This reduction was premised upon the fact that the appellant was already approved for 35 hours per week of PCA services, which included time for services such as cooking, cleaning, laundry, and medication reminders. The time authorized for companion services was to cover transportation services. (Testimony by CCA's representatives; Exhibit 7, pp. 67-68.)

5. In addition to transportation services, the appellant's companion helped cook and clean and provided helpful diversions, such as going for a walk and being available for venting. The appellant is also approved for PCA time to provide chore services including medication reminders. The appellant did not want his PCA to have their responsibilities reassigned. (Testimony by the appellant.)
6. The appellant's companion provided transportation for medical appointments and acupuncture each week and took him to pay about one bill per week. Each trip takes between one and two hours. He also tried to go for a walk for 30 minutes to an hour per day but did not go every day. The appellant will be starting physical therapy, which involves a couple sessions per week, but the services will be temporary. (Testimony by the appellant.)

Analysis and Conclusions of Law

Massachusetts's Secretary of Health and Human Services is authorized to participate in a demonstration program to integrate care for individuals, aged 21 to 64 at the time of enrollment, who are dually eligible for benefits under MassHealth Standard or CommonHealth and Medicare and do not have any additional comprehensive health coverage. (MGL Ch. 118E, § 9F(a).) This particular waiver program allows MassHealth to contract jointly the Centers for Medicare and Medicaid Services ("CMS") and integrated care organizations ("ICOs") to provide integrated, comprehensive Medicaid and Medicare services, including medical, behavioral health and long-term support services for a prospective blended payment from the executive office and the Centers for Medicare and Medicaid Services. (*Id.*) The One Care program is an ICO.

An ICO is defined 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 ICOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services." (130 CMR 610.004.) Whenever an ICO makes a coverage decision, it must provide notice to the affected member. (130 CMR 508.011.) An ICO has 30 days to resolve any internal appeals, and the member then has 120 days to request a fair hearing from the Board of Hearings. (*See* 130 CMR 508.012; 130 CMR 610.015(B)(7).)

Generally speaking, MassHealth is required to cover all services and treatments that are "medically necessary":

(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, or 517.007.

(130 CMR 450.204(A).)

Additional guidance “about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.” (130 CMR 450.204(D).) MassHealth publishes regulations regarding adult companion services under its Home- and Community-based Waiver Services regulations at 130 CMR 630.400, et seq. “Adult Companion Service[s]” are defined as “nonmedical care, supervision, and socialization provided to a participant. Companions may assist or supervise the participant with such light household tasks as meal preparation, laundry, and shopping.” (130 CMR 630.402.)

630.410: Adult Companion

(A) Conditions of Payment. Adult companion services must be provided in accordance with a therapeutic goal in the service plan. Adult companion services are covered where the adult companion enables the participant to function with greater independence within the participant's home or community.

(B) Nonpayable Services.

(1) Adult companion services are not covered where the services are purely recreational or diversionary in nature.

(2) Homemaker, home health aide, personal care, adult companion, individual support and community habilitation, and supportive home care aide services, in combination are limited to no more than 84 hours per week. The MassHealth agency or its designee may grant exceptions to the limit on a 90-day basis in order to maintain a participant's tenure in the community, to provide respite to a caregiver who lives with the participant, to facilitate transitions to a community setting, to ensure that a participant at risk for medical facility admission is able to remain in the community, or to otherwise stabilize a participant's medical condition. Exceptions may also be granted for participants awaiting transition to a residential waiver. Exceptions to the 84 hours per week limit must be included in the participant's waiver plan of care.

(130 CMR 630.410.)

Based upon this framework, CCA has created additional guidelines for when it covers companion services. (See Exhibit 7, pp. 54-57.) These guidelines largely reiterate the criteria set out by MassHealth:

Clinical Eligibility: in order to be eligible to receive Companion, the member

must have a physical, cognitive or behavioral-related disability such that the member requires supervision or assistance to travel safely to medical appointments.

...

Limitations:

- Companion **does not include assistance with ADLs or medication reminders.**
- Companion may be provided for the purposes of supervision or assistance only.

Exclusions:

- CCA does not pay for Companion services provided in a hospital, nursing facility, intermediate care facility for persons with intellectual disabilities, or any other institutional facility setting providing medical, nursing, rehabilitative, or related care.
- Companion may not be provided in Adult Day Health centers, Day Habilitation centers, or in combination with any other service or setting that includes supervision.
- Companion may not be combined with Group Adult Foster Care or Assisted Living Services (except as medical escort)
- **Adult companion services are not covered where the services are purely recreational or diversionary in nature.**

(Exhibit 7, pp. 54-55 (emphasis added).)

The appellant's companion provides compensable transportation to medical appointments, acupuncture, and to pay bills. She also takes him for walk outside for socialization and exercise. Assuming that each appointment or bill takes one-and-a-half hours on average, two medical appointments, two acupuncture appointments, and one bill per week totals seven-and-a-half hours of assistance. The appellant described going for a walk lasting between 30 minutes and an hour, but he does not go every day. As socialization itself is a compensable service, this decision will allow the full hour daily as it assumed the companion would socialize with the appellant even if they were unable to take a walk. This arrives at eight-and-a-half hours per week. The appellant testified that he occasionally goes to the emergency department, lasting five hours. There was no evidence regarding how frequently but allowing 30 minutes per week would equate roughly to once every other month. This appeal is APPROVED in part based upon the appellant's testimony regarding his need for services. He shall be authorized for 9 hours per week of companion services through the end of the prior authorization period, June 30, 2023.

I will not approve additional time for physical therapy transportation in this appeal, as there was no specific information provided regarding when the physical therapy would start. This appeal is

DENIED in part with regards to the appellant's request that he be allowed 17 or 18 hours of companion services per week.

Further, CCA should have specific information regarding how many medical appointments the appellant attends in an average week or month. CCA did not dispute the appellant's testimony regarding his current appointment schedule, and CCA should consider increasing companion services time when the appellant temporarily increases the quantity of appointments. For future requests, CCA may review how many appointments the appellant actually attends in an average per week and how long those appointments take. CCA may align companionship services to that review but should be prepared to explain how it chose the number of appointments and the duration of the appointment time.

Order for CCA

Remove Aid Pending. Allow 9 hours per week of companion services through the end of this prior authorization period, June 30, 2023.

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 CCA. 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.

Christopher Jones
Hearing Officer
Board of Hearings

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