

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2301221
<b>Decision Date:</b>	5/22/2023	<b>Hearing Date:</b>	03/31/2023
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**  
*Pro se via telephone*

**Appearance for Senior Care Organization (SCO):**  
Cassandra Horne, Appeals and Grievances Manager  
(the SCO representative)  
Jeremiah Mancuso, Clinical RN Appeals and Grievance  
Manager (the SCO appeals and grievances manager)  
Nicole Ward, Supervisor SCO PCA Team (PCA  
Supervisor)  
Kaley Ann Emery, Appeals Supervisor  
Michelle Shepard, Manager SCO PCA Team  
Jessica Hebert, Clinical RN Appeals Nurse (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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	SCO Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	5/22/2023	<b>Hearing Date:</b>	03/31/2023
<b>SCO's Rep.:</b>	Cassandra Horne; Jeremiah Mancuso; Nicole Ward; Kaley Ann Emery; Michelle Shepard; Jessica Hebert	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Quincy Harbor South		

### 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 2, 2022, Commonwealth Care Alliance (the SCO) denied the appellant's Level 1 appeal of the reduction in his PCA hours. (See 130 CMR 508.008; 422.000 *et seq.* and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on February 15, 2023. (See 130 CMR 610.015(B) and Ex. 2). An SCO's reduction of hours of PCA services is valid grounds for appeal. (See 130 CMR 610.032).

### Action Taken by the SCO

The SCO reduced the appellant's PCA services.

### Issue

The appeal issue is whether the SCO was correct, pursuant to 130 CMR 422.000 *et seq.*, in determining that the appellant's PCA services should be reduced.

## Summary of Evidence

The appellant is an individual over the age of 65 with diagnoses including type 2 diabetes mellitus with diabetic chronic kidney disease, memory impairment, carpal tunnel syndrome, chronic pain, impaired mobility and endurance, generalized anxiety disorder, radiculopathy, history of heart artery stent, diabetic cataract of both eyes. (Ex. 3; Ex. 7, pp. 9-10).

The SCO representative stated the following. The appellant has been enrolled in the SCO since February 2020. (Ex. 7, pp. 2, 100-101). The appellant requested 23.25 hours of day and evening PCA services per week. (Ex. 7, pp. On November 1, 2022, the SCO notified the appellant that it would this to 12.5 hours of day and evening PCA services, with no nights on November 12, 2022. (Ex. 7, pp. 66-74). The appellant submitted a Level 1 appeal on November 4, 2022. (Ex. 7, p. 75-76). Therefore the SCO granted aid pending at 23.25 hours. Ex. 7, p. 75). The SCO's medical director reviewed the appeal and decided that the initial determination was correct. (Ex. 7, pp. 144). Therefore, the SCO notified the appellant that it was upholding the initial determination of 12.5 hours. (Ex. 1; Ex. 7, pp. 145-152). The appellant did not appeal this determination to the Board of Hearing until February 15, 2023, and for that reason has not received aid pending this appeal. The SCO sent the file to the appellant, which was delivered on March 21, 2023.

The SCO PCA supervisor testified to the following. The SCO completed an evaluation of the appellant's needs in person on September 26, 2022. (Ex. 7, pp. 23-40). The SCO PCA supervisor stated that she was present in the appellant's home for this evaluation. As a result of the in-person evaluation, the SCO recommended that the appellant receive 12.5 hours of day and evening services per week. This was broken down as follows:

Activities of Daily Living (ADLs):  
Bathing: 105 minutes;  
Dressing: 49 minutes ;  
Undressing: 35 minutes;  
Medication Assistance: 9 minutes;  
Instrumental Activities of Daily Living (IADLs):  
Meal preparation: 364 minutes;  
Laundry: 60 minutes;  
Housekeeping: 60 minutes;  
Shopping: 60 minutes  
Total: 12.5 hour. (Ex. 7, pp. 26-40; Ex. 8).

The SCO PCA supervisor stated that the last assessment the appellant underwent was four years ago. For that reason, the SCO did not have a relevant point of comparison. With this home assessment, however, an SCO nurse and occupational therapist were able to determine the appellant's medical need for services.

The SCO appeals and grievances manager described the SCO's PA process. The SCO appeals and grievances manager explained that the SCO performs the evaluation which is then sent to the personal care management (PCM) agency to allow them to submit the prior authorization request to the SCO. The SCO is acting as the assessor. The SCO PCA supervisor stated the SCO has denied the appellant's request for PCA twice in the past when he had different managed care provider prior to February 2020<sup>1</sup> as criteria was not met (i.e., the appellant could not demonstrate that he required assistance with two or more ADLs). (Ex. 7, p. 2). In a level 2 BOH hearing, however, a PCA extension for the previous 28.25-day and 14-night hours/week was granted to allow for a new SCO PCA evaluation to be done. (Ex. 7, p. 2). The appellant has also had several extensions of his PCA eligibility because of the pandemic.

The SCO appeals and grievances manager stated that the SCO's PCA team determines the appropriate amount of time for activities using a time for task tool. (Ex. 7, pp. 41-51). This is based around determining a member's level of dependence: independent, minimum assistance, moderate assistance, maximum assistance and total dependence. For example, for bathing, someone needing minimum assistance with bathing would typically be given 15 minutes of assistance per day or 105 minutes per week.

The hearing officer reviewed the appellant's needs for assistance with ADLs and IADLs with the appellant and with the representatives from the SCO:

### **Bathing**

The appellant stated that the PCA assisted the appellant into and out of the shower. The appellant stated that the PCA does stand by to make sure that he does not fall but the appellant cleans himself. The PCA does assist with drying. The appellant estimated that showering takes about 10 to 12 minutes per day. The SCO appeals and grievances manager stated that at the time of assessment, the appellant informed the PCA teams that he was taking a shower three times per week and took sponge baths the other times. The appellant stated that this varies, sometimes he only showered twice per week.

### **Dressing and Undressing:**

The appellant stated that dressing takes 10 minutes per day. This involves the PCA getting the appellant's clothes ready by taking them out and putting them on his bed. The appellant stated that he puts on his pants but the PCA helps pull them up when needed. The appellant's need for assistance with pulling his pants up varies depending on how he feels. If the appellant is wobbling, the PCA will full assist him . The PCA assists with putting his shirt on. The SCO PCA supervisor added that the appellant also needs occasional assistance, pulling a shirt over his

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<sup>1</sup> The record shows that the appellant belonged to a different program within the same parent organization of the SCO.

head, fastening buttons, and putting on socks and underwear during times of increased pain. (Ex. 8, p. 8). The SCO PCA supervisor stated that the SCO gave 84 minutes total for dressing and undressing because this was reported as minimal assistance. (Id.). The appellant did state that the time give for undressing, 34 minutes per week, sounded about right.

#### **Assistance with Medication**

The SCO PCA supervisor clarified that in the appellant's case this means that the PCA provides some assistance with insulin administration. The SCO PCA supervisor stated that the appellant has a visiting nursing for oral medication. The SCO PCA supervisor did point out that the assessment submitted was unable to reconcile the appellant's medication on the day of the assessment because the appellant used a locked box. (Ex. 8, p. 10). The assessment also indicated that the appellant needed assistance with insulin administration when he had increased hand pain. (Id.).

The appellant stated that he used to have a person who would help administer his insulin at night. The appellant now did not have nighttime hours and the appellant was struggling with taking his insulin.

#### **Meal Preparation:**

The appellant stated that his PCA does cook and at night, he will make sandwich or warm up food made during day. The appellant stated that since his hours were cut, he no longer someone to cook for him at night and ends up hungry. The SCO appeals and grievances manager stated that the appellant was previously receiving 455 minutes per week for meal preparation. The SCO PCA supervisor stated the appellant reported in the assessment that he can prepare hot meals, however on the days of increased hand pain/leg pain he needs assistance with meal prep. (Ex. 8, p. 13). For this reason, the SCO did give the appellant partial time for this. The appellant responded by saying that he can do very little in preparing food and does not assist with the making of his food. The appellant asserted that the people who came during the assessment did not ask him how much assistance he required for meal preparation. The SCO PCA supervisor disputed this, she stated that she did ask the appellant at the time.

#### **Laundry:**

The appellant stated that his laundry is in his home. The appellant stated that he has developed bowel and urinary incontinence since the assessment. The appellant stated that he had an operation and he has been soiling his bed.

#### **Housekeeping**

The appellant stated that he is living by himself in a house. There are two floors. The PCA does sweeping, mopping, dusting, cleans the bathroom, and washes the dishes. The appellant stated that it takes most of an hour or longer to clean his house. The SCO appeals and grievances

manager stated that the time for task tool allows for between 30 and 90 minutes per week for assistance with housekeeping. (Ex. 7, p. 49). The SCO appeals and grievances manager stated that the time is generally added in 15-minute increments. This is decided by a member's functional ability or disability to assist, the size of the living space, the frequency of bedding and linen changes. This is assessed during the home visit. A maximum level of assistance indicates that a member would require 90 minutes per week. This applies if the member is completely unable to assist, has a larger than normal living space, incontinence, or things like that.

## **Shopping**

The appellant stated that he needed more time for shopping. The appellant stated it was hard for him to walk. It takes time for him to go to the grocery store and he may only go twice a month. The appellant stated that he could only assist a very minimal amount. He would accompany his PCA to the store about twice per month.

## **Findings of Fact**

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

1. The appellant is over the age of 65. (Ex. 3).
2. The appellant's diagnoses include type 2 diabetes mellitus with diabetic chronic kidney disease, memory impairment, carpal tunnel syndrome, chronic pain, impaired mobility and endurance, generalized anxiety disorder, radiculopathy, history of heart artery stent, diabetic cataract of both eyes. (Ex. 3; Ex. 7, pp. 9-10)
3. The appellant has been enrolled in the SCO since February 2020. (Testimony of the SCO representative; Ex. 7, pp. 2, 100-101).).
4. The appellant had not received an assessment of his need for PCA services since 2020. (Testimony of the SCO representative).
5. In order to assess the need for PCA services, the SCO performs an evaluation which is then sent to the PCM agency to allow it to submit the prior authorization request to the SCO. (Testimony of the SCO appeals and grievances manager).
6. The SCO has denied the appellant twice in the past when he had different managed care provider prior to February 2020. (Testimony of the SCO appeals and grievances manager).
7. The appellant has also had several extensions of his PCA eligibility because of the pandemic. (Testimony of the SCO appeals and grievances manager).
8. The appellant was previously denied PCA services as criteria was not met ((i.e., the

appellant could not demonstrate that he required assistance with two or more ADLs). (Testimony of the SCO appeals and grievances manager; Ex. 7, p. 2).

9. In a level 2 BOH hearing a PCA extension for the previous 28.25-day and 14-night hours/week was granted to allow for a new SCO PCA evaluation to be done. (Testimony of the SCO appeals and grievances manager; Ex. 7, p. 2).
10. The SCO completed an evaluation of the appellant's needs in person on September 26, 2022. (Ex. 7, pp. 26-40; Ex. 8).
11. As a result of the in-person evaluation, the SCO recommended that the appellant receive 12.5 hours of day and evening services per week broken down as follows:
  - 1) Activities of Daily Living (ADLs):
  - 2) Bathing: 105 minutes;
  - 3) Dressing: 49 minutes ;
  - 4) Undressing: 35 minutes;
  - 5) Medication Assistance: 9 minutes;
  - 6) Instrumental Activities of Daily Living (IADLs):
  - 7) Meal preparation: 364 minutes;
  - 8) Laundry: 60 minutes;
  - 9) Housekeeping: 60 minutes;
  - 10) Shopping: 60 minutesTotal: 12.5 hour. (Ex. 7, pp. 26-40; Ex. 8).
12. The appellant, through the PCM agency, requested 23.25 hours of day and evening PCA services per week. (Ex. 7, pp. 23-40).
13. On November 1, 2022, the SCO notified the appellant that it would this to 12.5 hours of day and evening PCA services, with no nights on November 12, 2022. (Ex. 7, pp. 66-74).
14. The appellant submitted a Level 1 appeal on November 4, 2022. (Ex. 7, pp. 75-76).
15. Therefore the SCO granted aid pending at 23.25 hours. (Ex. 7, p. 75).
16. The SCO's medical director reviewed the appeal and decided that the initial determination was correct. (Ex. 7, p. 144).
17. Therefore, the SCO notified the appellant that it was upholding the initial determination of 12.5 hours. (Ex. 1; Ex. 7, pp. 145-152).
18. The appellant did not appeal this determination to the Board of Hearing until February 15, 2023, and for that reason has not received aid pending this appeal. (Ex. 2).

19. The SCO sent the file to the appellant, which was delivered on March 21, 2023. (Testimony of the SCO representative).
20. The appellant estimated that showering takes about 10 to 12 minutes per day. (Testimony of the appellant).
21. The appellant reports that dressing takes about 10 minutes per day. (Testimony of the appellant).
22. The appellant reports increased recent urinary and bowel incontinence that results in soiled clothing and bedclothes/linens. (Testimony of the appellant).
23. The appellant reports that he is unable to prepare food for himself because of increased hand and leg pain. (Testimony of the appellant).

## **Analysis and Conclusions of Law**

MassHealth members who are 65 years of age or older may enroll in a Senior Care Organization (SCO) pursuant to 130 CMR 508.008(A). (130 CMR 508.001(C)). When a member chooses to enroll in a 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. (130 CMR 508.008(C)). The appellant is enrolled in a SCO pursuant to 130 CMR 508.008. The SCO covers PCA services in its plan under the MassHealth benefit. (Ex. 4). Therefore, the SCO uses the regulations for the Personal Care Attendant Services program in order to make PCA determinations.

As stated in 130 CMR 422.403(C), the SCO 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 prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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...
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

The requested services must also be medically necessary for prior authorization to be approved. (130 CMR 450.204; 130 CMR 422.416). 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 where such service is not medically necessary. (130 CMR 450.204).

(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 the Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 the Division 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.

(See 130 CMR 450.204).

MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs. (130 CMR 422.411(A)). ADLs include such activities such as physically assisting a member with basic care like bathing, personal hygiene, and grooming skills, as well as assisting a member to dress or undress. (130 CMR 422.410(A)(3),(4)). IADLs comprise such activities as household services, including shopping, meal preparation and clean up, transportation, and special services, such as the care and maintenance of wheelchairs and adaptive devices. (130 CMR 422.410(B)).

The appellant has not shown, by a preponderance of the evidence, that he requires more than 12.5 hours of day and evening PCA assistance per week. Although the appellant credibly testified concerning the effect of his physical conditions and their influence upon his ability to perform activities of daily living and instrumental activities of daily living, the appellant’s testimony either indicated that the SCO’s conclusions were correct or was so vague that it was insufficient to determine whether the SCO was incorrect. The appellant did testify that he has had an increase in incontinence. This could affect the time allotted for several activities and instrumental activities. The regulations do permit the appellant’s PCM agency to request an adjustment of hours based on

any changed circumstances. The record, however, supports the SCO's conclusions at this time.

For the above stated reasons, the appeal is DENIED.

## **Order for SCO**

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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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