


# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301331
Decision Date:	5/10/2023	Hearing Date:	03/22/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

 (Daughter) *via* telephone

Appearance for Commonwealth Care Alliance (CCA):

Cassandra Horne, Appeals and Grievances Coordinator (the SCO representative)

Jeremiah Mancuso, RN, Clinical Nurse, Appeals and Grievance Manager (the SCO appeals and grievance manager)

Kaley Ann Emery, Appeals Supervisor


Jessica Ebert, RN (Observing)

*via* telephone



*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>	Senior Care Options (SCO) Home Health Aide (HHA) Services
<b>Decision Date:</b>	5/10/2023	<b>Hearing Date:</b>	03/22/2023
<b>CCA's Rep.:</b>	Cassandra Horne; Jeremiah Mancuso; Kaley Ann Emery; Jessica Ebert, RN	<b>Appellant's Rep.:</b>	
<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 20, 2022, CCA (the SCO) denied the appellant's Level 1 appeal<sup>1</sup> contesting the reduction in her HHA hours from 70 hours *per* week to 39 hours *per* week. (See 130 CMR 508.001; 508.008; 403.000 *et seq* Exhibit (Ex.) 1, pp. 2-6; Ex. 4, pp. 25-29). The appellant filed this appeal in a timely manner on February 17, 2023. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request for HHA services by an SCO is valid grounds for appeal. (See 130 CMR 610.032).

## Action Taken by CCA

The SCO decreased the appellant's PCA services from 70 hours *per* week to 39 hours *per* week.

## Issue

The appeal issue is whether the SCO was correct, pursuant to 130 CMR 508.001, 508.008 and 403.000 *et seq*, in determining the appellant's need for HHA services.

---

<sup>1</sup> According to material submitted by CCA, the Level 1 appeal is an internal appeal of

## Summary of Evidence

The SCO representative stated that the appellant is an individual over the age of 65, who has been enrolled in the SCO's One Care Plan since March 1, 2022. The SCO representative stated that the appellant was receiving HHA services in the amount of 70 hours per week. On November 13, 2022, the SCO reduced the appellant's HHA services to 39 hours per week. The appellant did not qualify for continuation of her HHA at its previously level pending her Level 1 and the present appeal because she did not appeal in a timely fashion to receive aid pending. The SCO initially notified the appellant of the reduction of her HHA effective November 13 in a November 2, 2022 letter. The appellant appealed this on November 15, 2022. The SCO's medical director reviewed this Level 1 appeal and concluded that the determination should be upheld. In a notice dated December 20, 2022, the SCO informed the appellant that it had denied her appeal. The appellant appealed this determination to the Board of Hearings.

The SCO appeals and grievances manager explained that prior to the initial determination, the SCO started HHA services on a continuum of care basis at 70 hours *per* week. On September 1, 2022, prior to the end of this first continuum of care, an SCO nurse assessed the appellant's need for services in person. (Ex. 5, pp. 36-37). Using a time for task tool, the SCO nurse determined that the appellant required 39 hours of HHA assistance for both activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The ADLs were broken down as follows<sup>2</sup>:

ADLs	Hour Range	D	Comments
Bathing (includes dressing and grooming)	2-7 hours per week	7.0	Member unable to follow commands r/t dementia, takes extended amount of time needs assistance to get in and out of shower and washing
Eating/Feeding	1 – 3.5 hours per week	2.0	Member does not follow commands and often needs assistance feeding r/t Dementia
Transfers	1 – 3.5 hours per week	2.0	Member has weakness in her lower extremities, chronic pain in R & L knee, unsteady and needs cues to get up.
Ambulation	1 – 3.5 hours per week	2.0	Member uses a walker to ambulate but unsteady and needs cues on how to use it and where to do r/t Dementia
Toileting	1 – 3.5 hours per week	3.0	Member unable to do self cleaning or transfer on her own from sitting position after BM

---

<sup>2</sup> The following tables have been copied from the material the SCO submitted (Ex. 5, pp. 36-37). The hearing officer has made some changes to formatting. The hearing officer has also eliminated columns I(ndependent), S(upervision), and A(ssistance), since the appellant was determined to be D(ependent) in all ADLs. (See Ex. 5, p. 36).

Incontinence Management	1 – 3.5 hours per week	3.0	Member needs assistance to change brief when soiled unable to follow commands r/t Dementia
Medication Assistance	0.5 – 1.0 hours per week	1.0	Member needs to be encouraged to take pills r/t Dementia as well as administer
Health Maintenance Activities	0.5 – 3.5 hours per week	2.0	Member requires assistance with ambulation and cues to help increase her physical activity
ADL Total	22.0		

(Ex. 5, pp. 36).

The IADLs were broken down as follows:

IADLs	Hour Range	ID	Comments
Cooking/M meal Prep	S/A: 1 – 5 hours per week D: 1 – 10.5 hours per week	10.5	Member unable to do perform simple tasks and unable to follow steps needed to prepare a meal r/t Dementia
Shopping	0.5 – 1.5 hours per week	1.5	Member unable to walk long periods uses walker has hard time remembering weakness and unable to carry bags or put groceries away r/t Dementia [sic]
Laundry	In home/bldg: 0.5-1.5 hrs/wk Other: 0.5—2 hours per week	2.0	Member unable to perform laundry task r/t Dementia unable to carry laundry or remember where it goes r/t weakness and Dementia
Housekeeping	0.5—1 hour per week	1.0	Member cannot complete household chores d/t weakness and Dementia, unsteady on feet, bilateral leg weakness
Escort/Transportation	0.5—2 hours per week	2.0	Member requires an escort to and from appts and to get her into appt as she needs constant supervision and cues r/t Dementia, bilateral leg weakness, she becomes very restless and agitated as well.

<b>IADL Total</b>	17.0
-------------------	------

(Ex. 5, pp. 36-37).

On October 24, 2022, a home health agency submitted a PA request for the continuation of the appellant's HHA services at a level of 70 hours *per* week for dates of services from October 29 through December 28, 2022. (Ex. 5, pp. 15-17). Based on the time for task tool completed September 1, 2022, as well as other SCO documentation, the SCO decided to partially deny the appellant's PA request. (Ex. 5, pp. 18-21). On November 2, 2022, the SCO sent the appellant a notice, which informed her that her HHA services would be reduced to 39 hours *per* week beginning November 13, 2022. (Ex. 5, pp. 22-29).

The SCO appeals and grievances manager explained that the initial determination of 70 hours *per* week was not the result of an in-person assessment. There is no evidence that the member requires 70 hours *per* week of hands-on care. The SCO appeals and grievances manager acknowledged that the appellant has dementia, is bedbound, and that her family works during the day and cannot assist her at that time. The SCO appeals and grievances manager stated, however, that the HHA regulations do not permit HHA services to be used for monitoring, supervisory, or anticipatory services. HHA services were for assistance with ADLs and IADLs. The SCO appeals and grievances manager stated that it may be beneficial to explore Adult Day Health (ADH) in combination with HHA. The SCO appeals and grievances manager further explained that the SCO's care team has not been able to assist the appellant with obtaining ADH services because there was an insistence that HHA be used. The SCO appeals and grievances manager opined that ADH would be more appropriate given the appellant's dementia and supervisory needs. Another alternative would be Personal Care Attendant (PCA) services, where family members could be paid to be the PCA, although, again, MassHealth does not permit payment for supervision under this program.

The appellant's representative stated that she is a nurse who works during the day. The appellant is over 65, has dementia, and needs help. The appellant's representative stated that the home health aide used to look after the appellant while the appellant's representative worked or when she was not home. The appellant's representative stated that she now is responsible for looking after the appellant during the hours the home health aide is not working. The appellant's representative stated that she is the only family that assists with the appellant's supervision. The appellant's representative does not know what to do because the appellant needs all day care and the appellant's representative needs to work. Currently, the home health aide is only able to be present for part of the day, which means that the appellant is alone for the other part of the day.

## Findings of Fact

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

1. The appellant is an individual over the age of 65. (Testimony of the SCO representative; Testimony of the appellant's representative).

2. The appellant has been diagnosed with dementia and is bedbound. (Testimony of the SCO appeals and grievances manager; Testimony of the appellant's representative).
3. The appellant's representative works during the day and cannot assist her during that time. (Testimony of the SCO appeals and grievances manager; Testimony of the appellant's representative).
4. The appellant has been enrolled in the SCO's One Care Plan since March 1, 2022. (Testimony of the SCO representative).
5. The SCO started HHA services on a continuum of care basis at 70 hours *per* week. (Testimony of the SCO appeals and grievances manager).
6. On September 1, 2022, prior to the end of this first continuum of care, an SCO nurse assessed the appellant's need for services in person. (Ex. 5, pp. 36-37).
7. The SCO nurse determined that the appellant was dependent for all ADLs and IADLs. (Ex. 5, pp. 36-37).
8. Using a time for task tool, the SCO nurse determined that the appellant required 39 hours of HHA assistance *per* week for both ADLs and IADLs broken down as follows:
  - a. ADLs: bathing, which included dressing and grooming (seven hours per week), eating (two hours per week), transfers (two hours per week), ambulation (two hours per week), toileting (three hours per week), incontinence care (three hours per week), health maintenance (three hours per week), medication assistance (one hour per week);
  - b. IADLs: meal preparation (10.5 hours per week), shopping (1.5 hours per week), laundry (two hours per week), housekeeping (one hour per week), transportation (two hours per week).
  - c. Total: 39 hours *per* week. (Ex. 5, pp. 2-3; 36-37; Testimony of the SCO appeals and grievances manager).
9. On October 24, 2022, a home health agency submitted a PA request for the continuation of the appellant's HHA services at a level of 70 hours *per* week for dates of services from October 29 through December 28, 2022. (Ex. 5, pp. 15-17).
10. Based on the time for task tool completed September 1, 2022, as well as other SCO documentation, the SCO decided to partially deny the appellant's PA request. (Ex. 5, pp. 18-21).
11. On November 2, 2022, the SCO sent the appellant a notice, which informed her that her HHA services would be reduced to 39 hours *per* week beginning November 13, 2022. (Ex. 5, pp. 22-29).
12. The reduction in the appellant's hours went into effect on November 13, 2022 and has

continued at the level of 39 hours *per* week since that time. (Testimony of the SCO appeals and grievances manager).

## Analysis and Conclusions of Law

MassHealth managed care provides for the management of medical care, including primary care, behavioral health services, and other medical services. (130 CMR 450.117(B)). A Senior Care Organization (SCO) is 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. (130 CMR 403.402; 450.001; 501.001). MassHealth members who are 65 years of age or older may (but are not required to) enroll in an SCO pursuant to 130 CMR 508.008(A). (130 CMR 508.001(C); 508.002(A)(3)).

In order to voluntarily enroll in an SCO a MassHealth Standard member must meet all of the following criteria:

- (1) be 65 years of age or older;
- (2) live in a designated service area of a senior care organization;
- (3) not be diagnosed as having end-stage renal disease;
- (4) not be subject to a six-month deductible period under 130 CMR 520.028: *Eligibility for a Deductible*;
- (5) not be a resident of an intermediate care facility for individuals with intellectual disabilities (ICF/ID); and
- (6) not be an inpatient in a chronic or rehabilitation hospital. (130 CMR 508.008(A)).

MassHealth will notify members of the availability of an SCO in their service area and of the procedures for enrollment. (130 CMR 508.008(B)). An eligible member may voluntarily enroll in any SCO in the member's service area, which is the specific geographical area of Massachusetts in which an SCO agrees to serve its contract with MassHealth and the Centers for Medicare & Medicaid Services. (*Id.*). When a member chooses to enroll in an 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 a member of an SCO, and as such receives her services through that SCO. This includes services under the HHA program.

In order to receive HHA services, a MassHealth member (with the assistance of a home health agency) must obtain prior authorization from the SCO. (130 CMR 403.410(A)(1)). Without such prior authorization, MassHealth will not pay providers for these services. (*Id.*). Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or resort to health insurance payment. (130 CMR 403.410(A)(2)). Approvals for prior authorization specify the number of hours, visits, or units for each service that are medically necessary and payable each calendar week and the duration of the prior authorization period. (130 CMR 403.410(A)(3)). The authorization is issued in the member's name and specifies frequency and duration of care for each service approved *per* calendar week. (*Id.*). The home health agency must submit all prior authorization requests in accordance with the MassHealth agency's administrative and billing regulations and instructions and must submit each such request to the

appropriate addresses listed in Appendix A of the Home Health Agency Manual. (130 CMR 403.410(A)(4)). In conducting prior authorization review, the SCO may refer the member for an independent clinical assessment to inform the determination of medical necessity for home health services. (130 CMR 403.410(A)(5)). If authorized services need to be adjusted because the member's medical needs have changed, the home health agency must submit an adjustment request to the SCO. (130 CMR 403.410(A)(6)). MassHealth only pays for services up to the amount authorized in the PA. (130 CMR 403.410(A)(7)).

Home health aide services are payable only if all of the following conditions are met:

- (1) home health aide services are medically necessary to
  - (a) directly support curative, rehabilitative, or preventative aspects of nursing or therapy services provided by the home health agency; and/or
  - (b) provide hands-on assistance throughout the task or until completion, with at least two activities of daily living (ADLs) defined as: bathing, grooming, dressing, toileting/continence, transferring/ambulation, and eating.
- (2) the frequency and duration of the home health aide services must be ordered by the physician or ordering non-physician practitioner and must be included in the plan of care for the member;
- (3) the services are medically necessary to provide personal care to the member, to maintain the member's health, or to facilitate treatment of the member's injury or illness;
- (4) prior authorization, where applicable, has been obtained where required in compliance with 130 CMR 403.410;
- (5) the home health aide is supervised by a registered nurse or therapist for nursing services or therapy services, respectively, employed or contracted by the same home health agency as the home health aide. In the event that the home health agency contracts for, rather than directly employs, home health aides, such aides must be supervised in accordance with 42 CFR § 484.80(h), and 130 CMR 403.419(C);
- (6) all services provided by the home health aide must be delivered at the direction of the registered nurse or therapist supervising the home health aide. The individualized patient care instructions must be included in the member's plan of care or attached to the member's plan of care; and
- (7) the home health aide has completed a training and competency evaluation program as specified in 42 CFR 484.80(a)(b)(c) and the servicing home health agency has documented the home health aide's competency in all subject areas as described in 42 CFR 484.80(b)(3) within the last 12 months. (130 CMR 403.416(A)).

Home health aide services for ADL supports are only reimbursable if the member has two or more ADL needs that require hands-on assistance. (130 CMR 403.416(C)). This service requires a non-skilled nursing visit for assessment of the member and assessment and supervision of the home health aide care plan once every 60 days. (Id.). Payable home health aide services for ADL supports only include:

- (1) hands-on assistance with ADLs<sup>3</sup>...

---

<sup>3</sup> Activities of Daily Living, which are activities related to personal care, specifically bathing, grooming,

- (2) IADL support services provided incidental to hands-on ADL assistance;
- (3) monitoring or supervision provided incidental to or concurrently with hands-on ADL support;
- (4) personal care services<sup>4</sup> if provided in addition to hands-on ADL support... (Id.).

MassHealth does not pay for homemaker, respite, or chore services provided to any MassHealth member in the absence of ADL needs. (130 CMR 403.416(D)). It is not permissible for home health agencies to bill MassHealth for home health aide services for the primary purpose of providing non-payable home health aide services, or incidental services<sup>5</sup>. (Id.). Additionally, home health aide services are non-payable for monitoring of anticipatory and unpredictable services. (Id.).

The appellant has not demonstrated by a preponderance of the evidence that there is a medical necessity for more than 39 hours of home health aide services *per* week. The main argument the appellant's representative advanced in favor of an increase in hours concerned the fact that the appellant required more than 39 hours of supervision because of her health conditions. Unfortunately, the HHA program specifically prohibits payment for monitoring of anticipatory and unpredictable services such as these. The SCO representatives did suggest other programs that may actually allow for the type of services the appellant's representative is seeking. Unfortunately, the HHA program, however, is not designed for that purpose.

For the above stated reason, the appeal is DENIED.

## Order for CCA

None.

---

dressing, toileting/continence, transferring/ambulation, and eating. (130 CMR 403.402).

<sup>4</sup> These are services such as bathing, dressing, grooming, caring for hair, nail, and oral hygiene, which are needed to facilitate treatment or to prevent deterioration of the member's health, changing the bed linen, shaving, deodorant application, skin care with lotions and/or powder, foot care, ear care, feeding, assistance with elimination, routine catheter care, and routine colostomy care. (130 CMR 403.416(B)(1)).

<sup>5</sup> Incidental services are services that do not meet the definition of a home health aide service (for example, light cleaning, preparing a meal, removing trash). (130 CMR 403.416(E)). The regulations permit the home health aide to provide such incidental services. (Id.). However, the purpose of a home health aide visit must not be to provide these incidental services and home health aide visits are not reimbursable if used to primarily conduct incidental services, since they are not health-related services. (Id.).

## 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.

---

Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]