

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2302289
Decision Date:	5/19/2023	Hearing Date:	04/25/2023
Hearing Officer:	Marc Tonaszuck		

Appearances for Appellant:

Pro se with [REDACTED], PCA

Appearances for Commonwealth Care Alliance (CCA) Senior Care Organization (SCO):

Cassandra Horne, Appeals and Grievances Manager; Jeremiah Mancuso, RN, Clinical Nurse Appeals and Grievances Manager; Kaley Ann Emery, Appeals Supervisor; and Hanna Guskie, Supervisor of the Personal Care Attendant Program



*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:	SCO – Personal Care Attendant Services
Decision Date:	5/19/2023	Hearing Date:	04/25/2023
CCA SCO Reps.:	Cassandra Horne, Appeals and Grievances Manager; Jeremiah Mancuso, RN, Clinical Nurse Appeals and Grievances Manager; Kaley Ann Emery, Appeals Supervisor; and Hanna Guskie, Supervisor of the Personal Care Attendant Program	Appellant's Reps.:	Pro se with PCA
Hearing Location:	Quincy Harbor South	Aid Pending:	Yes

Authority

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

Jurisdiction¹

The appellant, a member of Commonwealth Care Alliance (“CCA”), a MassHealth Senior Care Organization (“SCO”), received a notice from CCA dated 03/09/2023 modifying the appellant’s request for personal care attendant (“PCA”) services (Exhibit 1). The appellant filed this appeal with the Board of Hearings in a timely manner on 03/20/2023 and her PCA time is protected pending the outcome of this appeal (130 CMR 610.015(B); Exhibit 2). Members enrolled in an SCO have a right to request a fair hearing for a decision to deny or provide limited authorization of a requested service, provided the member has exhausted all remedies available through the SCO’s internal appeals process (130 CMR 610.032(B)(2)). The appellant exhausted CCA’s internal appeals process.

Action Taken by MassHealth

CCA plans to modify the appellant’s request for PCA services to 58:30 day/evening hours plus 2 daily night time attendant hours.

Issue

Was CCA correct in planning to modify the appellant’s request for PCA services to 58:30 day/evening hours plus 2 daily night time attendant hours?

Summary of Evidence

Several representatives from CCA appeared telephonically at the fair hearing and they referenced a packet that was submitted prior to the fair hearing (Exhibit 4). Ms. Horne testified that this case involves the appellant, a MassHealth member, who has been enrolled in CCA’s SCO. CCA’s SCO manages the appellant’s health care needs.

Ms. Horne testified that the appellant was previously approved for 76-day hours/week and 14-night hours/week. After a review of her records and assessments/evaluations CCA determined that there is sufficient documentation to justify the reduction in PCA services hours from the previous year’s approval. A SCO PCA assessment was completed on 1/26/2023 by a contractor. According to the

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

assessment, the appellant is living and alone and the evaluator observed her functional capabilities. As a result, CCA decreased the PCA time from 76:00 day/evening hours per week plus 2 daily night time attendant hours to 58:30 day/evening hours plus 2 daily night time attendant hours.

Mobility/Transfers/Repositioning

The CCA evaluator determined that the appellant requires 10 minutes, 4 times a day, 7 days a week (10 X 4 X 7)² for assistance with transfers and 10 X 4 X 7 for assistance with repositioning. This is a reduction from last year when the appellant was approved for 15 X 6 X 7 for transfers and 15 X 6 X 7 for repositioning. The evaluator noted that the appellant is independent with mobility, she uses a power wheelchair, and needs maximum assistance for both transfers and repositioning. The CCA representative testified that the appellant's PCA time was increased last year as a result of a recent hospitalization in April 2022 and general weakness. According to the evaluator, her condition has improved since then.

The appellant testified that she is paralyzed and paraplegic. She recently had spinal surgery in September 2022 and she now has trouble getting out of bed. She needs "quite a lot of time" for transfers and repositioning.

Passive Range of Motion

CCA testified that passive range of motion ("PROM") exercises are for members who need assistance to stretch their limbs when they are unable to move the limbs by themselves. Last year, the appellant was approved for 15 X 2 X 7 for assistance with upper extremities ("UE") and 20 X 2 X 7 for assistance with the lower extremities ("LE"). Currently, the evaluator determined the appellant has active range of motion in her upper extremities. CCA initially denied the time requested for assistance with PROM; however, at the fair hearing, CCA restored 20 X 2 X 7 for PROM with the LE.

The appellant testified that she believes she will lose range of motion in her arms if she is not approved for time. She has no prescription from a medical professional for the PROM.

Bathing

CCA testified that the appellant has been approved for 58 minutes per day for assistance with showering and washing her hair.

The appellant agreed that the time approved would meet her needs for this task.

Grooming

² PCA time denoted in this format, 10 X 4 X 7, means 10 minutes, 4 times per day, 7 days per week.

CCA approved the appellant for 5 X 1 X 7 for assistance with nail care, 5 X 1 X 7 for assistance with applying lotion and 20 X 1 X 7 for hair brushing.

The appellant agreed that the time approved for assistance with grooming would meet her needs.

Dressing/Undressing

CCA approved the appellant for 30 X 1 X 7 for assistance with dressing and 20 X 1 X 7 for assistance with undressing. This is the same amount of time that was approved for assistance with dressing/undressing last year.

The appellant testified that she is “a lot weaker” than she was last year. She has had “lots of UTI’s and seizures,” and it is “harder to help get dressed.” She stated “it takes longer this year,” because last year she was able to hold onto a bar and stand, but this year she needs to be held up while she gets dressed and undressed. The PCA stated it takes 45 minutes to assist the appellant with dressing and 30 minutes per day for undressing.

Night Time Attendant Hours

CCA determined that the appellant qualified for 2 hours per night of PCA assistance.

The appellant did not contest the night time attendant hours.

Assistance with Medications

CCA approved the appellant for 20 X 1 X 7 for assistance setting up her pill box and 5 X 1 X 2 for assistance with her suppositories.

The appellant agreed that the time approved by CCA for assistance with medications would meet her needs.

Meal Preparation and Clean-Up

CCA approve the appellant for 20 X 1 X 7 for assistance with breakfast, 30 X 1 X 7 for lunch, and 45 X 1 X 7 for dinner.

The appellant stated that the time approved for assistance with meal preparation and clean-up would meet her needs.

Eating

CCA approved no time for assistance with eating. The CCA representatives testified that the

documentation shows she is independent with eating.

The appellant did not contest the denial of time for assistance with eating.

Toileting

CCA approved 25 X 4 X 7 for assistance with bladder care and 25 X 2 X 7 for assistance with bowel care.

The appellant agreed that the time approved for assistance with bladder and bowel care would meet her needs.

Laundry

CCA approved 90 X 1 X 1 for assistance with laundry. The CCA representative testified that PCA time for assistance with laundry is calculated using the time it takes to sort the laundry, put it in the machine, take it out of the machine and into the dryer, take it out of the dryer, fold it and put the laundry away. Time is not approved for the time it takes the machine to wash or dry the clothes.

The appellant testified that last year she need assistance with 2 loads of laundry per week; however, this year, due to night time incontinence, the PCA needs to do 3 loads of laundry per week.

Housekeeping

CCA approved 90 X 1 X 1 for assistance with housekeeping. This reflects an increase from the 60 X 1 X 1 that was approved last year.

The appellant testified that she needs at least 4 hours a week for assistance with housekeeping.

Shopping

CCA approved 90 X 1 X 1 for assistance with shopping.

The appellant testified that the time approved for assistance with shopping would meet her needs.

Equipment Maintenance

CCA approved 5 X 1 X 7 for assistance with equipment maintenance.

The appellant agreed that the time approved for assistance with equipment maintenance would meet her needs.

PCA Paperwork

CCA approved 15 X 1 X 7 for assistance with PCA paperwork.

The appellant testified that the time approved for assistance with PCA paperwork would meet her needs.

Transportation to Medical Appointments

CCA approved 33.85 minutes per week for assistance with transportation to medical appointments. The CCA representatives testified that the time is calculated by using the annual number of visits to the medical appointments, the distance from the appellant's home, and a standard amount of time for assistance into and out of the vehicle to and from the offices. This number is divided by 52 weeks to determine the weekly amount of PCA time for assistance.

The appellant testified that the time approved for assistance with transportation to medical appointments would meet her needs.

Findings of Fact

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

1. The appellant is a MassHealth member who is enrolled in Commonwealth Care Alliance ("CCA's") senior care organization ("SCO").
2. CCA's SCO manages the appellant's health care needs.
3. Last year the appellant was approved for 76:00 day/evening PCA hours and 2 daily night time attendant hours.
4. On 01/26/2023, an in-person assessment of the appellant's PCA needs was conducted.
5. As a result of the 01/26/2023 assessment, CCA approved 58:30 day/evening PCA hours and 2 daily night time attendant hours.
6. CCA informed the appellant of the approval by a notice dated 02/09/2023.
7. The appellant filed an internal appeal with CCA on 03/01/2023.
8. CCA's medical director reviewed the appellant's CCA internal appeal and denied the appeal on 03/09/2023.

9. The appellant exhausted CCA's internal appeal process.
10. On 03/20/2023, the appellant filed a request for a fair hearing with the Board of Hearings.
11. The appellant's PCA hours are protected at last year's approval pending the outcome of this appeal.
12. A fair hearing was held before the Board of Hearings on 04/25/2023.
13. The CCA evaluator determined that the appellant requires 10 minutes, 4 times a day, 7 days a week (10 X 4 X 7)³ for assistance with transfers and 10 X 4 X 7 for assistance with repositioning. This is a reduction from last year when the appellant was approved for 15 X 6 X 7 for transfers and 15 X 6 X 7 for repositioning. The evaluator noted that the appellant is independent with mobility, she uses a power wheelchair, and needs maximum assistance for both transfers and repositioning.
14. CCA denied PCA time for assistance with passive range of motion ("PROM") exercises for her upper extremities.
15. CCA approved 20 X 2 X 7 for assistance with PROM with her lower extremities.
16. PROM is approved only in instances where the member is not able to independently move their extremity(ies).
17. The appellant is able to independently move her upper extremities.
18. CCA approved 58 minutes per day for assistance with showering and washing the appellant's hair.
19. The appellant agreed that the time approved for showering and hair washing would meet her needs.
20. CCA approved the appellant for 5 X 1 X 7 for assistance with nail care, 5 X 1 X 7 for assistance with applying lotion and 20 X 1 X 7 for hair brushing.
21. The appellant agreed that the time approved for assistance with grooming would meet her needs.
22. CCA approved the appellant for 30 X 1 X 7 for assistance with dressing and 20 X 1 X 7 for

³ PCA time denoted in this format, 10 X 4 X 7, means 10 minutes, 4 times per day, 7 days per week.

assistance with undressing. This is the same amount of time that was approved for assistance with dressing/undressing last year.

23. The appellant is “a lot weaker” than she was last year. She has had “lots of UTI’s and seizures,” and it is “harder to help get dressed.” She stated “it takes longer this year,” because last year she was able to hold onto a bar and stand, but this year she needs to be held up while she gets dressed and undressed. The PCA stated it takes 45 minutes to assist the appellant with dressing and 30 minutes per day for undressing.
24. CCA determined that the appellant qualified for 2 hours per night of PCA assistance.
25. The appellant did not contest the night time attendant hours.
26. CCA approved the appellant for 20 X 1 X 7 for assistance setting up her pill box and 5 X 1 X 2 for assistance with her suppositories.
27. The appellant agreed that the time approved by CCA for assistance with medications would meet her needs.
28. CCA approve the appellant for 20 X 1 X 7 for assistance with breakfast, 30 X 1 X 7 for lunch, and 45 X 1 X 7 for dinner.
29. The appellant stated that the time approved for assistance with meal preparation and clean-up would meet her needs.
30. CCA approved no time for assistance with eating. The CCA representatives testified that the documentation shows she is independent with eating.
31. The appellant did not contest the denial of time for assistance with eating.
32. CCA approved 25 X 4 X 7 for assistance with bladder care and 25 X 2 X 7 for assistance with bowel care.
33. The appellant agreed that the time approved for assistance with bladder and bowel care would meet her needs.
34. CCA approved 90 X 1 X 1 for assistance with laundry.
35. PCA time for assistance with laundry is calculated using the time it takes to sort the laundry, put it in the machine, take it out of the machine and into the dryer, take it out of the dryer, fold it and put the laundry away. Time is not approved for the time it takes the machine to wash or dry the clothes.

36. The appellant experiences night time incontinence.
37. CCA approved 90 X 1 X 1 for assistance with housekeeping. This reflects an increase from the 60 X 1 X 1 that was approved last year.
38. CCA approved 90 X 1 X 1 for assistance with shopping.
39. The appellant testified that the time approved for assistance with shopping would meet her needs.
40. CCA approved 5 X 1 X 7 for assistance with equipment maintenance.
41. The appellant agreed that the time approved for assistance with equipment maintenance would meet her needs.
42. CCA approved 15 X 1 X 7 for assistance with PCA paperwork.
43. The appellant testified that the time approved for assistance with PCA paperwork would meet her needs.
44. CCA approved 33.85 minutes per week for assistance with transportation to medical appointments.
45. The appellant testified that the time approved for assistance with transportation to medical appointments would meet her needs.

Analysis and Conclusions of Law

The regulatory definition of medical necessity is set forth at 130 CMR 450.204. 130 CMR 450.204(A) and (B) state as follows:

The MassHealth agency 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 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.

(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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

Regulations at 130 CMR 508.008 address Senior Care Organizations as follows:

(C) 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.

Fair hearing regulations at 130 CMR 610.032(B) describe appeal rights of SCO members:

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):

- (1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;
- (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;
- (3) a decision to reduce, suspend, or terminate a previous authorization for a service;

...

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See Andrews vs. Division of Medical Assistance, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333 , 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386 , 390 (1998).

The appellant, a MassHealth member, is enrolled in CCA's SCO. During the last approval period, the appellant was approved for 76:00 day/evening PCA hours per week plus 2 daily night time attendant hours. On 01/26/2023, an in-person assessment of the appellant's PCA needs was conducted by CCA. On 02/09/2023, CCA determined that the appellant requires 58:30 day/evening hours of PCA assistance per week plus 2 daily night time attendant hours. The appellant submitted an internal appeal with CCA on 02/15/2023, and the appeal was denied on 03/09/2023. The appellant exhausted CCA's internal appeal process and filed a request for a fair hearing with the Board of Hearings on 03/20/2023. A fair hearing took place on 04/25/2023 before the Board of Hearings.

In the areas of bathing (showering and hair washing), grooming (nail care, applying lotion, and hair brushing), assistance with medications, night time attendant hours, meal preparation and clean-up, eating, toileting (bladder and bowel care), shopping, equipment maintenance, PCA paperwork and transportation to medical appointments, the appellant did not contest CCA's calculations of PCA time. As a result, those portions of this appeal are denied.

Mobility/Transfer/Repositioning

The CCA evaluator determined that the appellant requires 10 minutes, 4 times a day, 7 days a week (10 X 4 X 7) for assistance with transfers and 10 X 4 X 7 for assistance with repositioning. This is a reduction from last year when the appellant was approved for 15 X 6 X 7 for transfers and 15 X 6 X 7 for repositioning. The evaluator noted that the appellant is independent with mobility, she uses a power wheelchair, and needs maximum assistance for both transfers and repositioning.

The appellant testified that she needs more time, but she did not state how much time is required. Neither she nor the PCA were able to demonstrate by a preponderance of evidence that the time approved by CCA would not meet her needs. CCA's approval time is supported by the material facts in the hearing record and the regulations. Accordingly, this portion of the appeal is denied.

Passive Range of Motion

CCA denied PCA time for assistance with passive range of motion ("PROM") exercises for her upper extremities. CCA approved 20 X 2 X 7 for assistance with PROM with her lower extremities. According to the nurses at CCA, PROM is approved only in instances where the member is not able

to independently move their extremity(ies). The appellant is able to independently move her upper extremities. Although the appellant stated that she fears losing mobility in her upper extremities if she is not allowed PCA time for PROM, there is no evidence to support that PROM is appropriate. CCA's approval time is supported by the material facts in the hearing record and the regulations. Thus, this portion of the appeal is denied.

Dressing/Undressing

CCA approved the appellant for 30 X 1 X 7 for assistance with dressing and 20 X 1 X 7 for assistance with undressing. This is the same amount of time that was approved for assistance with dressing/undressing last year. The appellant argued that she is "a lot weaker" than she was last year. She has had "lots of UTI's and seizures," and it is "harder to help get dressed." She stated "it takes longer this year," because last year she was able to hold onto a bar and stand, but this year she needs to be held up while she gets dressed and undressed. The PCA stated it takes 45 minutes to assist the appellant with dressing and 30 minutes per day for undressing. I credit the testimony of the PCA. She has testified as to exact times for the task. Accordingly, this portion of the appeal is approved.

Laundry

CCA approved 90 X 1 X 1 for assistance with laundry. PCA time for assistance with laundry is calculated using the time it takes to sort the laundry, put it in the machine, take it out of the machine and into the dryer, take it out of the dryer, fold it and put the laundry away. Time is not approved for the time it takes the machine to wash or dry the clothes. The appellant testified that she needs more time than 90 minutes per week because she experiences night time incontinence, resulting in more laundry needs. However, the appellant did not explain why the night time attendant hours (14 per week) could not be used to assist with the extra laundry needs. CCA's approval time is supported by the material facts in the hearing record and the regulations. As a result, this portion of the appeal is denied.

Housekeeping

CCA approved 90 X 1 X 1 for assistance with housekeeping. This reflects an increase from the 60 X 1 X 1 that was approved last year. The appellant testified that housekeeping takes 4 hours per week; however, no evidence was presented to show why the appellant requires any more time than the CCA approval. CCA's approval time is supported by the material facts in the hearing record and the regulations. As a result, this portion of the appeal is denied.

Order for CCA

Release aid pending. In the area of dressing/undressing, approve 45 minutes per day for dressing

and 30 minutes per day for undressing. Approve 20 X 2 X 7 for PROM (LEs). Proceed with all other modifications.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Division of Medical Assistance, at the address on the first page of this decision.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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