

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302318
Decision Date:	5/5/2023	Hearing Date:	04/27/2023
Hearing Officer:	Thomas J. Goode	Aid Pending:	No

Appearance for Appellant:
Pro se with Daughter

Interpreter:
Language Line

**Appearances for United HealthCare Senior
Care Options:**

Susan McAllister, M.D., Medical Director,
Long Term Care Services and Supports



*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:	Denied	Issue:	PCA Services
Decision Date:	5/5/2023	Hearing Date:	4/27/2023
UHCSCO's Rep.:	Susan McAllister, M.D., Medical Director, Long Term Care Services and Supports	Appellant's Rep.:	Pro se with Daughter
Hearing Location:	Remote		

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 March 9, 2023, and following a first-level standard internal appeal, United HealthCare (UHCSCO) notified Appellant that it had upheld modifications to Appellant's request for Personal Care Attendant (PCA) services (130 CMR 508.008, 422.000 *et seq.* and Exhibit 1). Appellant filed this appeal in a timely manner on March 21, 2023 (130 CMR 508.008, 610.015, 610.032(B) and Exhibit 2). Modification of a prior authorization request for PCA services is valid grounds for appeal (130 CMR 508.008, 610.032(B)).

Action Taken by United HealthCare Senior Care Options

Following a level-one standard internal appeal, United HealthCare Senior Care Options modified Appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether United HealthCare Senior Care Options was correct in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

The Board of Hearings provided an interpreter for the appeal.

United HealthCare Senior Care Options was represented by Dr. Susan McAllister who testified that Appellant is a MassHealth member enrolled in United HealthCare Senior Care Options (UHCSCO) program. Appellant was authorized by her previous health plan for 36.25 day/evening Personal Care Attendant (PCA) hours and 2 nighttime hours. Appellant enrolled in UHCSCO in November 2019 and 36.25 PCA day/evening hours and 2 nighttime hours were continued in 2020, 2021, and 2022 due to the pandemic. An in-person evaluation of Appellant's need for PCA services was conducted by a registered nurse on January 25, 2023, and PCA hours were authorized for 13.5 day/evening hours per week (Exhibit 6). Appellant submitted a request for a level-one appeal to UHCSCO on March 7, 2023, and on March 9, 2023, UHCSCO upheld the reduction in PCA hours to 13.5 day/evening hours (Exhibit 1).

The in-person evaluation records that Appellant is [REDACTED] with primary diagnoses of lung disease, kidney disease, hypertension, Diabetes, fibromyalgia, and spinal stenosis (Exhibit 5). Appellant lives with her spouse. The nurse-reviewer noted that Appellant's durable medical equipment (DME) includes a shower chair, a hand-held shower, grab bars for support, a walker/rollator, commode, wheelchair and blood pressure cuff, glucometer, and incontinence supplies. Appellant denied the need for additional durable medical equipment other than portable oxygen for which she was approved but has not begun using. Appellant was observed able to get in and out of bed and reposition in bed independently without DME. Appellant was observed to ambulate independently throughout her home with her rolling walker with a steady gait but was easily fatigued and breathless. Appellant was unable to walk more than a couple of steps without becoming short of breath and unable to speak. The report notes that a previous face-to-face visit showed Appellant required 2-person assist to ambulate. Appellant reported she can get from her apartment to a waiting car in front of her apartment by using her walker without requiring any physical assistance. She also reported that if a lot of walking is involved in an activity, she is pushed in her wheelchair by the PCA. Appellant was observed to reposition independently while seated in a chair and was able to independently transfer from bed/couch/chair using her walker for balance and stability. She was also observed to independently sit and stand from a dining table chair by using her walker but became breathless. Based on the evaluation, UHCSCO allowed no PCA time for assistance with transfers or mobility.

In the area of bathing, Appellant reported she is unable to reach her hands to opposite shoulders as it hurts her neck and back. Appellant reported she can independently wash her chest, abdomen, peri area and upper thighs. Appellant requires assistance with washing upper arms/shoulders/neck as well as her lower legs and feet. Appellant reported that she is assisted transferring into the tub which requires her to hold onto a grab bar while her legs are lifted one at a time over tub threshold. UHCSCO approved 32 minutes per day, 7 days per week for transferring into and out of the bath, and for assistance with bathing. UHCSCO also approved an additional 10 minutes per day, 3 days per week to wash, dry, and style Appellant's hair and 2 minutes per day, 7 days per week to comb her hair. Appellant reported she can independently

complete personal hygiene including oral care. Appellant reported inability to lift her arms or bend to dress/undress. UHCSCO allowed PCA time 12 minutes per day, 7 days per week for assistance with dressing and undressing Appellant's upper and lower body. Appellant is independent with all eating and drinking activities and can use the toilet independently by using a walker and safety frame for balance. Appellant is also able to independently change incontinence pads. Appellant is independent with medication administration, and was able to identify each medication, dosage, and reason for each medication, and was able to open pill bottles and independently take all prescribed medications.

Regarding IADLs (instrumental activities of daily living), the evaluation shows that Appellant is unable to prepare meals. UHCSCO approved 245 minutes per week PCA time for meal preparation in daily increments of 5 minutes for breakfast preparation, 15 minutes for lunch preparation, and 15 minutes for dinner preparation. Appellant reported that she needs assistance with laundry including gathering and sorting, loading, and unloading clothes from the machines and putting clothes away due to neck and back pain. Appellant reported that laundry machines are located in the home. UHCSCO allowed 60 minutes PCA time for laundry. Appellant was observed to need assistance with cleaning floors, vacuuming, and housework due to neck and back pain. UHCSCO allowed 90 minutes per week for housework. UHCSCO also allowed 20 minutes per week for assistance with picking up groceries and medications and putting away groceries in addition to support provided by her spouse. Appellant reported she is not able to manage finances and that her daughter manages all finances. Appellant reported she uses a wheelchair to attend medical appointments and needs assistance getting in and out of the car. UHCSCO allowed 35 minutes per week for assistance with medical appointments which were reported as 12 appointments per year. The UHCSCO representative stated that PCA assistance for medical appointments is authorized to assist Appellant getting to and from the vehicle for transportation to the appointments but does not include time for accompanying Appellant during the appointment. Dr. McAllister testified that she reviewed a letter dated February 22, 2023 submitted by Dana-Faber Cancer Institute which discusses Appellant's history of cancers including Stage IV lung cancer and a history of treatment for leukemia, as well as her need for someone to be present with her when her spouse is not home (Exhibit 6). Dr. McAllister determined that the letter does not affect the number of hands-on PCA hours approved, which were appropriately determined through the on-site evaluation. Dr. McAllister suggested that Appellant contact UHCSCO to initiate companion services. Appellant's next in-person evaluation is due in June 2023.

Appellant appeared by telephone and was accompanied by her daughter. Appellant's daughter testified that Appellant lives with her spouse, and neither she nor her spouse remember the on-site evaluation occurring. Appellant's daughter questioned whether the evaluation occurred, and whether Appellant signed the evaluation. Appellant and her daughter testified that Appellant has poor balance and is afraid of falling and needs someone to stay with her during the day. Appellant's daughter testified that Appellant needs assistance with ADLs and is afraid to use the walker when she is alone. Appellant stated that her spouse works every day and is unable to help her until he returns home. Appellant also stated that she has not contacted UHCSCO to apply for companion services because the PCA was with her until her hours were reduced.

Findings of Fact

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

1. Appellant is a MassHealth member enrolled in United HealthCare Senior Care Options program.
2. Appellant was authorized by her previous health plan for 36.25 day/evening Personal Care Attendant (PCA) hours and 2 nighttime hours. Appellant enrolled in UHCSCO in November 2019 and 36.25 PCA day/evening hours and 2 nighttime hours were continued in 2020, 2021, and 2022 due to the pandemic.
3. An in-person evaluation of Appellant's need for PCA services was conducted by a registered nurse on January 25, 2023, and PCA hours were authorized for 13.5 day/evening hours per week (Exhibit 6).
4. Appellant submitted a request for a level-one appeal to UHCSCO on March 7, 2023, and on March 9, 2023 UHCSCO upheld the reduction in PCA hours to 13.5 day/evening hours.
5. Appellant is [REDACTED] with primary diagnoses of lung disease and stage IV lung cancer, kidney disease, hypertension, Diabetes, fibromyalgia, spinal stenosis, and has been treated for leukemia.
6. Appellant lives with her spouse.
7. Appellant's durable medical equipment (DME) includes a shower chair, a hand-held shower, grab bars for support, a walker/rollator, commode, wheelchair and blood pressure cuff, glucometer, and incontinence supplies. Appellant denied the need for additional durable medical equipment other than portable oxygen for which she was approved but has not been able to utilize.
8. Appellant can get in and out of bed and reposition in bed independently without DME.
9. Appellant can ambulate independently throughout her home with her rolling walker with a steady gait but is easily fatigued and breathless.
10. Appellant can get from her apartment to a waiting car in front of her apartment by using her walker without requiring any physical assistance. If a lot of walking is involved in an activity, she is pushed in her wheelchair by the PCA.
11. Appellant can reposition independently while seated in a chair and is able to independently transfer from bed/couch/chair using her walker for balance and stability.
12. Appellant can independently sit and stand from a dining table chair by using her walker.

13. UHCSCO allowed no PCA time for assistance with transfers or mobility.
14. Appellant can independently wash her chest, abdomen, peri area and upper thighs. Appellant requires assistance with washing upper arms/shoulders/neck as well as her lower legs and feet. Appellant is assisted transferring into the tub which requires her to hold onto a grab bar while her legs are lifted one at a time over the tub threshold.
15. UHCSCO approved 32 minutes per day, 7 days per week for transferring into and out of the bath, and for assistance with bathing. UHCSCO approved an additional 10 minutes per day, 3 days per week to wash, dry, and style Appellant's hair and 2 minutes per day, 7 days per week to comb her hair.
16. Appellant can independently complete personal hygiene including oral care.
17. Appellant is unable to lift her arms or bend to dress/undress. UHCSCO allowed PCA time 12 minutes per day, 7 days per week for assistance with dressing and undressing Appellant's upper and lower body.
18. Appellant is independent with all eating and drinking activities.
19. Appellant can use the toilet independently by using a walker and safety frame for balance. Appellant is also able to independently change incontinence pads.
20. Appellant is independent with medication administration, and can identify each medication, dosage, and reason for each medication, open pill bottles and independently take all prescribed medications.
21. Appellant is unable to prepare meals. UHCSCO approved 245 minutes per week PCA time for meal preparation with daily increments of 5 minutes for breakfast preparation, 15 minutes for lunch preparation, and 15 minutes for dinner preparation.
22. Appellant needs assistance with laundry including gathering and sorting, loading, and unloading clothes from the machines and putting clothes away due to neck and back pain. Appellant reported that laundry machines are in the home. UHCSCO allowed 60 minutes PCA time for laundry.
23. Appellant needs assistance with cleaning floors, vacuuming, and housework due to neck and back pain. UHCSCO allowed 90 minutes per week for housework.
24. UHCSCO allowed 20 minutes per week for assistance with picking up groceries and medications and putting away groceries in addition to support provided by her spouse.
25. Appellant's daughter manages household finances.

26. Appellant uses a wheelchair to attend medical appointments and needs assistance getting in and out of the car. UHCSCO allowed 35 minutes per week for assistance with medical appointments which were reported as 12 appointments per year.

27. Appellant's next in-person evaluation is due in June 2023.

Analysis and Conclusions of Law

Appellant has the burden of proving by a preponderance of the evidence the invalidity of the determination by the MassHealth agency or the SCO contracting with MassHealth.¹ Appellant is a MassHealth member enrolled in United HealthCare Senior Care Options program, which is a health plan that contracts with both Medicare and the Commonwealth of Massachusetts Medicaid program to provide benefits of both programs to enrollees. UHC Senior Care Options is designed specifically for people who have Medicare and who are also entitled to assistance from MassHealth (Medicaid). Pursuant to 130 CMR 508.008(C), when a MassHealth member chooses to enroll in a senior care organization (SCO), 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. As such, UHCSCO is responsible for authorizing all covered services for Appellant, including PCA services in accordance with its medical necessity guidelines for PCA services and MassHealth regulations. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met: (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416; (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 as defined in 130 CMR 422.410(A); (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 450.204: Medical Necessity

The MassHealth agency does not pay a provider for services that are 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

¹ See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002) (burden is on appellant to demonstrate the invalidity of an administrative determination).

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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.²

The UHCSCO Guidelines and MassHealth regulations establish that PCA services require prior authorization.³ Prior authorization requests submitted to UHCSCO for determination are reviewed in accordance with 130 CMR 422.000 *et seq.*, and must provide all covered services in an amount, duration, type, frequency and scope that is no less than the amount, duration, type, frequency and scope for the same services provided under MassHealth fee for service.^{4,5} UHCSCO is responsible for determining eligibility and the hours of physical assistance that are medically necessary for PCA services in accordance with 130 CMR 422.000 *et seq.*

Appellant is a MassHealth member enrolled in United HealthCare Senior Care Options program. Appellant is [REDACTED] with primary diagnoses of lung disease and stage IV lung cancer, kidney disease, hypertension, Diabetes, fibromyalgia, spinal stenosis, and has been treated for leukemia. Appellant was authorized by her previous health plan for 36.25 day/evening Personal Care Attendant (PCA) hours and 2 nighttime hours. Appellant enrolled in UHCSCO in November 2019 and 36.25 PCA day/evening hours and 2 nighttime hours were continued in 2020, 2021, and 2022 due to the pandemic. An in-person evaluation of Appellant's need for PCA services was conducted by a registered nurse on January 25, 2023, and PCA hours were authorized for 13.5 day/evening

² The UHCSCO Medical Necessity Guidelines provide: Medically Necessary—means health care services, supplies, or drugs needed for the prevention, diagnosis, or treatment of your sickness, injury or illness that are all of the following as determined by us or our designee, within our sole discretion:

- In accordance with Generally Accepted Standards of Medical Practice.
- Most appropriate, in terms of type, frequency, extent, site and duration, and considered effective for your sickness, injury, or illness.
- Not mainly for your convenience or that of your doctor or other health care provider.
- Meet, but do not exceed your medical need, are at least as beneficial as an existing and available medically appropriate alternative and are furnished in the most cost-effective manner that may be provided safely and effectively.

Generally Accepted Standards of Medical Practice are standards that are based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community, relying primarily on controlled clinical trials, or, if not available, observational studies from more than one institution that suggest a causal relationship between the service or treatment and health outcomes. If no credible scientific evidence is available, then standards that are based on Physician specialty society recommendations or professional standards of care may be considered. We reserve the right to consult expert opinion in determining whether health care services are Medically Necessary. The decision to apply Physician specialty society recommendations, the choice of expert and the determination of when to use any such expert opinion, shall be within our sole discretion. See Exhibit 4, Evidence of Coverage, pp. 49-50.

³ See Exhibit 4, Evidence of Coverage p. 81, and 130 CMR 422.416.

⁴ See Exhibit 4, p. 343, Section 2.6 Enrollee Access to Services.

⁵ See 130 CMR 422.411: Covered Services(A) MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.

hours per week. Appellant submitted a request for a level-one appeal to UHCSCO on March 7, 2023, and on March 9, 2023 UHCSCO upheld the reduction in PCA hours to 13.5 day/evening hours. The on-site evaluation reported:

Activities of Daily Living

Pursuant to the January 25, 2023 on-site evaluation completed by a UHCSCO registered nurse:

Bed Repositioning/Walking/Ambulation/Transfers:

Appellant's durable medical equipment (DME) includes a shower chair, a hand-held shower, grab bars for support, a walker/rollator, commode, wheelchair and blood pressure cuff, glucometer, and incontinence supplies. Appellant denied the need for additional durable medical equipment other than portable oxygen for which she was approved but has not been able to utilize. Appellant can get in and out of bed and reposition in bed independently without DME. Appellant can ambulate independently throughout her home with her rolling walker with a steady gait but is easily fatigued and breathless. Appellant can get from her apartment to a waiting car in front of her apartment without requiring any physical assistance by using her walker. If a lot of walking is involved in an activity, she is pushed in her wheelchair by the PCA. Appellant can reposition independently while seated in a chair and is able to independently transfer from bed/couch/chair using her walker for balance and stability. Appellant can independently sit and stand from a dining table chair by using her walker. UHCSCO approved no PCA time for repositioning, walking, ambulation or transfers.

Bathing:

Appellant can independently wash her chest, abdomen, peri area and upper thighs. Appellant requires assistance with washing upper arms/shoulders/ neck as well as her lower legs and feet. Appellant is assisted transferring into the tub which requires her to hold onto a grab bar while her legs are lifted one at a time over the tub threshold. UHCSCO approved 32 minutes per day, 7 days per week for transferring into and out of the bath, and for assistance with bathing. UHCSCO also approved an additional 10 minutes per day, 3 days per week to wash, dry, and style Appellant's hair and 2 minutes per day, 7 days per week to comb her hair.

Personal Hygiene/Oral Care:

Appellant can independently complete personal hygiene including oral care.

Dressing/Undressing:

Appellant is unable to lift her arms or bend to dress/undress. UHCSCO allowed PCA time 12 minutes per day, 7 days per week for assistance with dressing and undressing Appellant's upper and lower body.

Eating/Drinking Activities:

Appellant is independent with all eating and drinking activities.

Toileting:

Appellant can use the toilet independently by using a walker and safety frame for balance. Appellant is also able to independently change incontinence pads.

Medication Administration:

Appellant is independent with medication administration, and can identify each medication, dosage, and reason for each medication, open pill bottles and independently take prescribed medications.

For each ADL reviewed, the in-person evaluation completed by a UHCSCO reviewing nurse on January 25, 2023 provides a detailed review of Appellant's functional abilities based on observation of Appellant completing each task, and provides the clinical reasoning for PCA time allowed to complete each task. Appellant and her daughter disagreed generally with the reduction in PCA hours largely based on Appellant's need to have someone present while her husband is at work; however, their testimony does not support a finding that more hands-on PCA time is medically necessary in any ADL area evaluated, but may support the need for companion services identified by Dr. McAllister. Further, the February 22, 2023, medical letter in support of continuing PCA services at previous levels does not discuss specific ADLs or the findings from the on-site evaluation, and points to the need to have someone present in the home while Appellant's husband is at work (Exhibit 5). Dr. McAllister's testimony is therefore credible in establishing that Appellant's diagnoses do not warrant increased hands-on PCA services beyond the hours determined through the on-site evaluation. Appellant has not carried the burden of showing that the UHCSCO determination of PCA hours is incorrect.⁶

⁶ Appellant's daughter's assertion that the on-site evaluation did not occur because Appellant does not specifically remember the evaluation or signing the evaluation is not credible, and no evidence was produced to support the inference that the on-site evaluation is therefore fabricated. Dr. McAllister noted that a telephonic review with an interpreter was conducted on 11/4/2022 and found that Appellant needed 10.75 PCA hours per week, but no changes were made because the review was telephonic. Dr. McAllister also noted that Appellant rescheduled appointments for an in-person evaluation prior to the January 25, 2023 appointment which was conducted without an interpreter by a nurse reviewer who is fluent in Appellant's preferred language. Dr. McAllister added that the UHCSCO contract with MassHealth allows for an electronic signature which was presumably obtained. MassHealth regulations require that a member or surrogate sign an evaluation; however, while there is no evidence in the hearing record showing Appellant's electronic signature, and even if *arguendo* Appellant did not sign the evaluation, a continuation of services at the previous level does not follow. Rather, if the member or surrogate has not signed the evaluation, services may be deferred or denied which is not the case here (130 CMR 422.422(D); 422.422(C)(2)-(4)). Going forward, it would likely benefit Appellant if her daughter and other family members were present at the next PCA evaluation due in June 2023 to ensure all necessary paperwork is completed, and to review each ADL and IADL with the nurse reviewer.

INSTRUMENTAL ACTIVITIES OF DAILY LIVING

Meal Preparation/Housekeeping/Shopping/Laundry/Finances/Medical Appointments:

Appellant is unable to prepare meals. UHCSCO approved 245 minutes per week PCA time for meal preparation with daily increments of 5 minutes for breakfast preparation, 15 minutes for lunch preparation, and 15 minutes for dinner preparation. Appellant needs assistance with laundry including gathering and sorting, loading, and unloading clothes from the machines and putting clothes away due to neck and back pain. Appellant reported that laundry machines are located in the home. UHCSCO allowed 60 minutes PCA time for laundry. Appellant needs assistance with cleaning floors, vacuuming, and housework due to neck and back pain. UHCSCO allowed 90 minutes per week for housework. UHCSCO allowed 20 minutes per week for assistance with picking up groceries and medications and putting away groceries in addition to support provided by her spouse. Appellant is unable to manage finances and her daughter manages all finances. Appellant uses a wheelchair to attend medical appointments and needs assistance getting in and out of the car. UHCSCO allowed 35 minutes per week for assistance with medical appointments which were reported as 12 appointments per year. For each IADL reviewed, the in-person evaluation completed by a UHCSCO reviewing nurse provides a detailed review of Appellant's functional abilities determined with Appellant's input, and the clinical reasoning for PCA time allowed to complete each task. Appellant and her daughter generally disagreed with the reduction in PCA hours, but their testimony does not support a finding that more PCA time is medically necessary in any IADL area evaluated. Further, Dr. McAllister's testimony and review of medical records is credible in determining that Appellant's diagnoses and treatment history do not warrant increased PCA services to complete IADL activities. Appellant has not carried the burden of showing that the UHCSCO determination is incorrect.

For the foregoing reasons, the appeal is DENIED.

Order for United HealthCare Senior Care Options

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: United HealthCare SCO, Attn: Dr. Susan McAllister, 950 Winter St. Suite 3800 Waltham,
MA 02451