

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2302515
Decision Date:	5/26/2023	Hearing Date:	05/04/2023
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



**Appearance for Commonwealth Care Alliance
Senior Care Organization:**

Cassandra Horne, Appeals and Grievances
Manager; Jeremiah Mancuso, RN, Clinical
Nurse Appeals and Grievances Manager; Kaley
Ann Emery, Appeals Supervisor; and Amy
Stebbins, Manager of the PCA team



*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:	Dismissed in part; Denied in part	Issue:	Senior Care Organization Personal Care Attendant Services
Decision Date:	5/26/2023	Hearing Date:	05/04/2023
CCA SCO's Reps.:	Cassandra Horne, Appeals and Grievances Manager; Jeremiah Mancuso, RN, Clinical Nurse Appeals and Grievances Manager; Kaley Ann Emery, Appeals Supervisor; and Amy Stebbins, Manager of the PCA team	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	No

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 MassHealth member who is enrolled in Commonwealth Care Alliance (“CCA”) MassHealth Senior Care Organization (“SCO”), received a notice from CCA dated 03/08/2023 denying the appellant’s request for an increase in the amount of personal care attendant (“PCA”) services from 54:15 day/evening hours to 55:15 weekly day evening hours (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 denied the appellant’s request for an increase in PCA services from 54:15 to 55:15 weekly day/evening hours.

Issue

Was CCA correct in denying the appellant’s request for an increase of PCA services from 54:15 day/evening hours to 55:15 day/evening 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 is enrolled in CCA’s SCO. CCA’s SCO manages the appellant’s health care needs.

Ms. Horne testified that the appellant has an authorization in place for personal care attendant services. He has been authorized 54:15² weekly day/evening hours plus 14 weekly night time

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.

² 54:15 is the format used to denote 54 hours and 15 minutes.

attendant hours. On [REDACTED] 2022, an in-person assessment was performed at the appellant's home by Tempus Unlimited, Inc. (PCA Provider), at which time the request was made for additional time for passive range of motion exercises and PCA paperwork. CCA denied the request on 12/22/2022. On 02/06/2023, the appellant filed an internal appeal with CCA and it was denied on 03/08/2023. On 03/28/2023, the appellant appealed to the Board of Hearings.

At the fair hearing on 05/04/2023, Mr. Mancuso from CCA testified that CCA reconsidered the request and approved the full time requested for assistance with passive range of motion exercises. The time has been approved for this task. The time requested for assistance with PCA paperwork, however, remains denied.

Ms. Stebbins testified for CCA that the PCA provider requested 60 minutes per week for assistance with PCA paperwork. She explained that the appellant is required to oversee each PCA who provides care, to fill out a service/care plan and to keep track of the PCA's time. The appellant is also required to check the PCA's time sheet for accuracy before it is submitted to the PCA provider. CCA modified the request for assistance with PCA paperwork to 15 minutes per week. Ms. Stebbins testified that 60 minutes is excessive for this task and the appellant should be able to complete this task in 15 minutes.

The appellant appeared at the fair hearing and testified telephonically with a friend who assisted him. They testified that the appellant has 2-3 PCAs who assist him. Due to the appellant's pain and stiffness, it takes him more than 15 minutes to review the paperwork. The appellant's friend testified that it takes 45 minutes per week to complete this task. The paperwork must be reviewed with each PCA, then the appellant signs the paperwork.

Ms. Stebbins responded that the time for PCA paperwork involves the appellant only asking each PCA "do you agree that this is the time you worked?" This should take no more than 15 minutes a week.

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. The appellant has a current authorization for 54:15 weekly day/evening PCA hours and 2 daily night time attendant hours.

4. On [REDACTED] 2022, an in-person assessment was performed at the appellant's home by Tempus Unlimited, Inc. (PCA Provider), at which time the request was made for additional time for passive range of motion exercises and PCA paperwork.
5. CCA denied the request for increased PCA time on 12/22/2022.
6. On 02/06/2023, the appellant filed an internal appeal with CCA and it was denied on 03/08/2023.
7. On 03/28/2023, the appellant appealed to the Board of Hearings.
8. A fair hearing was held before the Board of Hearings on 05/04/2023.
9. At the fair hearing, CCA restored all time, as requested for assistance with passive range of motion exercises.
10. CCA had previously approved 15 minutes per week for assistance with PCA paperwork.
11. Appellant's PCA provider requested an increase to 60 minutes per week for assistance with PCA paperwork.
12. CCA denied the request to increase the time for assistance with PCA paperwork to 60 minutes per week.
13. Time for assistance with PCA paperwork is not the time the appellant spends on the paperwork, but the time it takes the PCA to prepare the paperwork so that it can be submitted to the PCA provider for payment.

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 54:15 day/evening PCA hours per week plus 2 daily night time attendant hours. On [REDACTED] 2022, an in-person assessment was performed at the appellant's home by Tempus Unlimited, Inc. (PCA Provider), at which time the request was made for additional time for passive range of motion exercises and PCA paperwork. CCA denied the request for increased PCA time on 12/22/2022. On 02/06/2023, the appellant filed an internal appeal with CCA and it was denied on 03/08/2023. On 03/28/2023, the appellant appealed to the Board of Hearings. A fair hearing was held before the Board of Hearings on 05/04/2023.

At the fair hearing, CCA agreed to restore all time requested for assistance with passive range of motion exercises. Accordingly, this portion of the appeal is dismissed.

In the area of assistance with PCA paperwork, CCA denied the request for 60 minutes per week, but left in place the 15 minutes per week that had previously been approved. The CCA representatives testified that the time for this task is the time the PCA needs to complete the paperwork with the appellant so that it can be submitted to the PCA provider for payment. CCA asserted that 15 minutes a week should be adequate to meet the appellant's needs to complete this task.

The appellant and his friend testified that he needs at least 45 minutes a week because he has 2-3 PCAs and the appellant needs to complete the paperwork for them and review their hours. The friend testified that the appellant is slow to complete the paperwork because of his pain and stiffness. However, the time for this task is not how long the appellant takes to complete the paperwork, but the time for the PCAs to complete their paperwork after conferring with the appellant. The appellant has not met his burden of showing that CCA's authorization is inadequate to meet his medical needs. CCA's denial of additional time for this task is supported by the regulations and the material facts in the hearing records. Thus, this portion of the appeal is denied.

Order for CCA

In the area of passive range of motion exercise, approve the increased time, as agreed to at the fair hearing. With regard to the increased time request for PCA paperwork, none.

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