

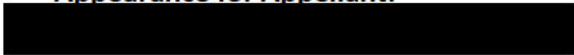
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2303616
Decision Date:	9/14/2023	Hearing Date:	6/13/2023
Hearing Officer:	Cynthia Kopka	Record Open to:	7/11/2023

Appearance for Appellant:



Appearance for Respondent:

Cassandra Horne, Appeals and Grievances
Manager
Jeremiah Mancuso, Clinical RN Appeals and
Grievances Manager
Kaley Ann Emery, Appeals Supervisor
Nicole Ward

Interpreter:

Zully Rodriguez, Spanish



*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:	Personal care attendant services
Decision Date:	09/14/2023	Hearing Date:	6/13/2023
Respondent's Rep.:	Cassandra Horne, Jeremiah Mancuso, Kaley Ann Emery, Nicole Ward	Appellant's Rep.:	Surrogate
Hearing Location:	Quincy (remote)	Aid Pending:	No

Authority

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

Jurisdiction

By notice dated April 12, 2023, Commonwealth Care Alliance (CCA), a MassHealth Senior Care Organization (SCO), denied Appellant's Level I appeal, partially approving Appellant's request for personal care attendant (PCA) service hours. Exhibit 1. Appellant filed this appeal in a timely manner on May 8, 2023. Exhibit 2; 130 CMR 610.015(B). Denial of assistance is a valid basis for appeal. 130 CMR 508.010; 130 CMR 610.032(B).

Action Taken by Respondent

CCA partially approved Appellant's request for PCA service hours.

Issue

The appeal issue is whether Appellant is eligible for more PCA service hours than approved by CCA.

Summary of Evidence

CCA's representatives, including an appeals and grievances supervisor, nurse review manager, and appeal supervisor appeared by phone and provided written materials in support. Exhibits 4 and 5. Appellant was represented by her surrogate. A summary of testimony and written materials follows. Appellant has been enrolled in CCA's SCO program since October 1, 2012. The request on appeal was for personal care attendant (PCA) services. On March 9, 2023, CCA reviewed Appellant's request for 33.5 day/evening hours and 14 night hours per week of PCA services and issued a partial approval, reducing Appellant's hours to 26.5 day/evening hours and 14 night hours weekly effective May 1, 2023. On March 13, 2023, Appellant appealed the partial approval by phone (Level 1). A medical director reviewed the appeal.

On April 10, 2023, CCA denied the Level 1 appeal. CCA mailed notification of the denial on April 12, 2023. Exhibit 1. Appellant's Level 2 appeal was not received by May 1, 2023 and therefore CCA determined that Appellant was not entitled to keep her prior level of benefits pending the outcome of the appeal.

Appellant's annual PCA assessment was performed on [REDACTED], 2023, with Appellant, the surrogate, and the PCA present. Based on the assessment, CCA made 5 modifications to Appellant's request for services: bathing, grooming, dressing, toileting, and medical transportation. At hearing, the CCA representative agreed with Appellant that there was an error in a letter received by Appellant denying night hours. The CCA representative testified that he would make a correction to approve 14 night hours retroactively to the original date of service. That correction is addressed in the order below.

In the area of bathing, Appellant requested 315 minutes per week (or 45 minutes per day). CCA modified the request to 280 minutes (or 40 minutes per day). CCA approved 315 minutes in the year prior because at the time, Appellant had sustained a broken wrist and could only wash her face independently. Since the wrist fracture has healed, the records indicate that Appellant is functionally able to wash her face, neck, trunk, and peri area. Exhibit 4 at 154.¹ The assessment listed Appellant as requiring moderate assistance with bathing, as opposed to the prior year when she required maximum assistance. *Id.* at 154, 166.

Appellant's surrogate testified that she disagreed that Appellant has improved functionally. In January 2023, Appellant injured her spine, fracturing L1 disc. Appellant also has problems with her hips and arthritis. Her injuries and conditions impede her ability to move from side to side. As a result, Appellant can only wash her own face and peri area. Appellant cannot wash her torso because of the spine injury. Appellant's surrogate raised this issue with the nurse during the assessment and was confused why the nurse did not consider this as part of the assessment.

¹ The CCA nurse reviewer testified that in 2021, Appellant received 24.75 day and 14 night PCA hours weekly. In 2022, when Appellant sustained her broken wrist, her hours increased to 33.5 day and 14 night PCA hours weekly.

In the area of grooming, Appellant requested 140 minutes per week (or 20 minutes per day). CCA modified the request and approved 80 minutes per week (a little more than 11 minutes per day). CCA determined that based on the assessment, Appellant is functionally able to brush her teeth and hair and clip her toenails independently. CCA's testimony did not match the record, which indicated that Appellant can clip her own fingernails but requires assistance with toenails. Exhibit 4 at 155. In the prior year with her wrist injury, Appellant was only able to brush her teeth with a set-up assist. The assessment listed Appellant as requiring moderate assistance with hair care, nail care, and lotions, as opposed to the prior year when she required maximum assistance. *Id.* at 155, 166.

Appellant's surrogate testified that Appellant can brush her teeth and hair independently but cannot clip her fingernails or toenails. Though her wrist fracture is healed, Appellant cannot grasp clippers. Due to her spinal injury, Appellant cannot bend to clip her toes. The record also shows that Appellant needs assistance applying lotion to her lower half. *Id.*

In the area of dressing, Appellant requested 161 minutes per week (or 23 minutes daily). CCA modified the request and approved 126 minutes per week (or 18 minutes daily). CCA determined that Appellant is able to thread her arms and legs through clothes and requires occasional help to pull up pants. Appellant requires help clasping her bra and to don and doff socks and shoes. *Id.* at 156. Again, the time was decreased due to Appellant's arm fracture having healed. The assessment listed Appellant as requiring moderate assistance with dressing, as opposed to the prior year when she required maximum assistance. *Id.* at 156, 167. Appellant's surrogate testified that Appellant cannot put on her own underwear because she cannot bend over. Appellant can perform some upper body dressing, such as putting on a shirt over her head, but cannot button or zipper her own clothes.

In the area of toileting, CCA determined that Appellant is now independent with toileting during day/evening hours. Appellant required maximum assistance in the year prior. *Id.* at 157, 167. The record shows that Appellant can change her own incontinence pad and get on and off the toilet herself with a grab bar. *Id.* at 157. Appellant agreed that Appellant can change her own pad, but requires assistance ambulating to the toilet.

In the area of medical transportation, CCA approved 900 minutes of PCA assistance yearly, comprised of 45 minutes travel time and 15 minutes of assistance with transfers for 15 appointments per year ($45 + 15 = 60$ minutes, $60 \text{ minutes} \times 15 \text{ appointments} = 900 \text{ minutes}$). *Id.* at 164. Appellant's surrogate testified it is difficult to challenge this determination because she does not know how many appointments Appellant will have per year, but that 15 appointments seemed like an okay estimate.

The record did not contain sufficient information regarding how Appellant's spinal injury is affecting her functional status. Therefore, the hearing record was held open through June 27, 2023 for Appellant's surrogate to provide a doctor's note describing her injury and its impact on her

ability to perform ADLs. CCA had through July 11, 2023 to review and respond. Exhibit 6. Neither party submitted any additional information.

Findings of Fact

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

1. Appellant has been enrolled in CCA's SCO program since October 1, 2012.
2. In 2021, Appellant received 24.75 day/evening and 14 night PCA hours weekly.
3. In 2022, Appellant received 33.5 day/evening and 14 night PCA hours weekly after sustaining a wrist fracture.
4. On March 9, 2023, CCA reviewed Appellant's request for 33.5 day/evening hours and 14 night hours per week of PCA services and issued a partial approval, reducing Appellant's hours to 26.5 day/evening hours and 14 night hours weekly effective May 1, 2023.
5. On March 13, 2023, Appellant appealed the partial approval by phone (Level 1).
6. On April 10, 2023, CCA denied the Level 1 appeal. CCA mailed notification of the denial on April 12, 2023. Exhibit 1.
7. Appellant filed this appeal on May 8, 2023. Exhibit 2.
8. In the area of bathing, Appellant requested 315 minutes per week (or 45 minutes per day). CCA modified the request to 280 minutes (or 40 minutes per day).
9. In the area of grooming, Appellant requested 140 minutes per week (or 20 minutes per day). CCA modified the request and approved 80 minutes per week.
10. In the area of dressing, Appellant requested 161 minutes per week (or 23 minutes daily). CCA modified the request and approved 126 minutes per week (or 18 minutes daily).
11. In the area of toileting, CCA determined that Appellant is now independent with toileting during day/evening hours. Appellant required maximum assistance in the year prior. *Id.* at 157, 167.
12. In the area of medical transportation, CCA approved 900 minutes of PCA assistance yearly, comprised of 45 minutes travel time and 15 minutes of assistance with transfers for 15 appointments per year ($45 + 15 = 60$ minutes, $60 \text{ minutes} \times 15 \text{ appointments} = 900$

minutes). *Id.* at 164.

13. The hearing record was held open through June 27, 2023 for Appellant's surrogate to provide a doctor's note describing her injury and its impact on her ability to perform ADLs. CCA had through July 11, 2023 to review and respond. Exhibit 6.
14. Neither party submitted any additional information.

Analysis and Conclusions of Law

A senior care organization (SCO) is "a comprehensive network of medical, health care and social service providers that integrates all components of care, either directly or through subcontracts. SCOs will be responsible for providing enrollees with the full continuum of Medicare and MassHealth covered services." G.L. c. 118E, § 9D(a). MassHealth members over the age of 65 may elect to enroll in a SCO to deliver the member's primary care and authorize, arrange, integrate, and coordinate the provision of all covered services for the member. 130 CMR 508.001(C), 508.008(C), 450.117(A). Members whose services are administered by a SCO have notice and appeal rights as set forth in 130 CMR 508.011 and 130 CMR 610.032. An SCO has 30 days to resolve any internal appeals, and the member then has 120 days to request a fair hearing from the Board of Hearings. See 130 CMR 508.012; 130 CMR 610.015(B)(7).

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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.

Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) dressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel or bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM agency must assume the following.

(1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

CCA Senior Care Options is a MassHealth SCO. CCA's Member Handbook, Exhibit 5, provides which services the plan covers, including home care services to assist with ADLs. Exhibit 5 at 73.

Here, it is undisputed that Appellant qualifies for PCA services. The issues in dispute that remain after hearing are CCA's modifications of bathing, grooming, and dressing. Appellant did not dispute the denial of daytime toileting assistance and agreed that the time for transportation was satisfactory. Additionally, CCA agreed to restore the 14 hours of weekly night assistance that was left off of the approval in error (reflected in the order below).

Regarding assistance with bathing, this appeal is denied. The record shows that Appellant had more functional ability to perform parts of her bathing task than in the year prior when she was approved for 45 minutes per day. Additionally, Appellant did not submit records during the record open period to support her argument that the recent spine fracture inhibited her ability to perform parts of the bathing task.

Regarding grooming, this appeal is approved in part. Again, Appellant did not submit records regarding her spinal fracture. However, Appellant's surrogate offered credible evidence that Appellant's prior wrist injury continues to impair Appellant's ability to perform grooming tasks such as clipping her nails. CCA's guidelines provide that 15 minutes of assistance daily is average for an individual who requires moderate assistance. Therefore, this appeal is approved in part to increase Appellant's grooming assistance to 105 minutes per week, or 15 minutes daily.

For dressing, this appeal is denied. Appellant did not provide the evidence requested to show how her back injury impacts her participation in the dressing activity. CCA approved 18 minutes, which falls between the averages for individuals with moderate assist needs (15 minutes) and maximum assist needs (20 minutes). This is appropriate given the testimony of both parties.

Though Appellant did not offer the requested evidence of her back injury and how it affects her functional ability at this appeal, Appellant may submit that evidence to CCA to support the request for an adjustment of hours based on her needs.

Order for CCA

Restore 14 hours of night CPA assistance per week as discussed at hearing and 105 weekly minutes of grooming assistance, effective May 1, 2023.

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.

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, at the address on the first page of this decision.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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