

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304329
Decision Date:	08/18/2023	Hearing Date:	07/06/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:
Via telephone
Pro se

Appearance for United Healthcare:
Via telephone
Susan McAllister, M.D., Medical Director,
Long-Term Care Program

Interpreter: 



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:	Prior Authorization for PCA Services
Decision Date:	08/18/2023	Hearing Date:	07/06/2023
UHC's Rep.:	Dr. Susan McAllister	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Quincy Harbor South 2 (Remote)	Aid Pending:	Yes

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 May 17, 2023, United Healthcare (UHC), a Senior Care Options (SCO) managed care program that contracts with MassHealth, notified the Appellant that it had denied her Level 1 Appeal regarding her request for personal care attendant (PCA) hours. (Exhibit 1). On May 22, 2023, the Appellant filed a timely appeal with the Board of Hearings. (130 CMR 610.015(B)). Denial of a request for services is a valid basis for appeal. (130 CMR 610.032).

Action Taken by MassHealth

United Healthcare SCO denied the Appellant's request of 12.25 daytime hours per week for PCA services. It then then denied her Level 1 Appeal of that initial decision.

Issue

The appeal issue is whether the evidence supports United Healthcare's denial of 12.25 hours of daytime PCA services per week.

Summary of Evidence

The United Healthcare (UHC) representative appeared at the hearing via telephone and offered the following background through testimony and documentary evidence: The Appellant is a female in her early 70's with diagnoses that include chronic fatigue, high blood pressure, chronic pain, transient ischemic attack (mini stroke), and Vitamin B deficiency.

The UHC representative testified that a registered nurse from UHC completed the current functional assessment in the Appellant's home on April 25, 2023.¹ The nurse observed her performing her activities of daily living (i.e., walking, bathing, eating) and instrumental activities of daily living (i.e., shopping, cooking, laundry). Based on the nurse's observations, the Appellant was found to be independent in all activities of daily living. Further, the Appellant was found to need assistance in at least 6 instrumental activities of daily living. In accordance with the pertinent regulations, because the Appellant was found to be independent in all activities of daily living, she does not qualify for PCA services. However, because the Appellant was found to need assistance with at least 6 instrumental activities of daily living, she therefore qualifies for Consumer Directive Care (CDC) services.²

The UHC representative testified that the current assessment was compared with a telephonic assessment that was completed in 2021. (Exhibit 6). Next, the UHC representative reviewed the individual ADL task areas and referred to the assessment, as follows:

1. Bed Repositioning:

Reported: Member reports sleeping on the couch after her spouse passed away.

Observed: Member demonstrated ability to reposition herself independently on the couch without difficulty.

The UHC representative explained that UHC determined (both in 2021 and at the current time) that the member is independent with this task, thus no PCA time was authorized for this task (no change).

2. Transfers:

Reported: Member reports she is able to get in and out of her bed and chair without physical assistance.

Observed: Member was observed getting in and out of a kitchen chair, lying

¹ At the time of the assessment, the UHC representative testified that the Appellant's daughter and grandson were both present to provide interpreter services. (See, Exhibit 6).

² Upon further inquiry, the UHC representative explained that time for CDC assistance has been authorized and included within the Appellant's service plan.

down on her couch, and lifting both legs to reposition herself without any assistance.

The UHC representative explained that UHC determined (both in 2021 and at the current time) that the member is independent with this task, therefore no PCA time was authorized (no change).

3. Walking/Ambulation (in and outside the home):

Reported: Member reports she can walk independently in the home without the use of medical equipment (i.e., a walker).

Observed: Member was observed walking independently in the home. Member was also observed walking outside the home and the findings were similar to walking inside the home by report and observation.

The UHC representative explained that UHC determined (both in 2021 and at the current time) that the member is independent with this task, and thus no PCA time was authorized for this task (no change).

4. Bathing:

Reported: Member reports ability to shower independently, with the use of a hand-held shower. Member reports ability to wash her arms, back, legs and feet. The nurse offered to have a grab bar set up to assist the Appellant with stability, which she accepted. With respect to transferring in and out of the bathtub, Member reports that she is slow in transferring because she has a claw foot tub. The Member's grandson installed a grab bar within the shower area which the Member reports as helpful.

Observed: Member was observed demonstrating that she could lift her arms over her head, allowing herself to wash her arms, back, and abdomen. Member was further observed bending at the waist, allowing herself to wash her lower body. Additionally, Member was observed using the grab bar within the shower area and lifting one leg at a time to get into her bathtub.

The UHC representative explained that this is a change from the Appellant's prior assessment when she required assistance with bathing due to her COVID diagnosis at that time, which left the Appellant exhausted without any exertion. At that time, the Appellant was approved for limited PCA assistance.

5. Personal Hygiene/Hair:

Reported: Member reports she is able to independently wash face and hands, brush her gums³ and rinse with mouthwash, wash/comb her hair, and trim her toenails. Member reports she cannot trim her fingernails.

Observed: Member was observed mimicking movements for all actions reported above.

The UHC representative explained that UHC determined (both in 2021 and at the current time) that the member is independent with these tasks, and therefore no PCA time was authorized (no change).

6. Dressing/Undressing (upper and lower body):

Reported: Member reports that she is able to dress her upper body (above the waist) independently. She reports that she is able to use fasteners, buttons, and zippers. Member reports that she is able to dress her lower body without difficulty.

Observed: Member was observed to reach her arms above her head to put a shirt over her head and pull it down. Member was further observed demonstrating how to clasp the back of her bra, put on undergarments, pants, socks, and shoes without difficulty.

The UHC representative explained that this is a change from the Appellant's prior assessment when she required assistance with dressing and undressing due to weakness and fatigue as a result of COVID.

7. Eating:

Reported: Member reports independence with eating and drinking and denies difficulty chewing or swallowing.⁴

Observed: Member was observed to bring her hands to her mouth allowing her to eat and drink independently.

The UHC representative explained that UHC determined (both in 2021 and at the current time) that the member is independent with these tasks, and therefore no PCA time was authorized

³ The Appellant testified that she does not have any teeth, though she maintains oral hygiene.

⁴ The Appellant further reported, accordingly, that while she does not have any teeth, it does not prohibit her food choices. Further, upon inquiry made by the nurse during the Appellant's recent assessment, the Appellant declined obtaining dentures.

(no change).

8. Toileting:

Reported: Member reports that she is independent with toileting, continent with bowels though occasionally incontinent with urine. With respect to the latter, Member reports that she does not use products for incontinence and is able to perform toilet hygiene independently.

Observed: Member was observed sitting on the toilet and getting up without assistance. Member was further observed bending at the waist to independently manage her clothing after toilet use.

The UHC representative explained that this is a change from the Appellant's prior assessment when she required assistance with toileting due to weakness from COVID.

The UHC representative then reviewed the individual IADL task areas, as follows:

9. Medication:

Reported: Member reports that she has some difficulty in managing her medications. She reports taking her daily medications (without reminders) from the pill box that the CDC worker pre-fills.

Observed: Member was observed to firmly grasp the medications on her kitchen table, allowing her to open the bottles independently.

The UHC representative explained that this is a change from the Appellant's prior assessment when she required assistance in reading the medication bottles due to poor vision. At that time, the Appellant received assistance in setting up her weekly pill box.

10. Meal Preparation:

Reported: Member reports not receiving home delivered meals. She further reports ability to prepare light meals or snacks, cut food, and reheat food in the microwave. Member is unable to use the stove due to weakness and fatigue, along with her inability to stand for long periods of time or lift heavy pots and pans.

Observed: Member was observed walking without assistance to prepare a light snack and re-heating food in a microwave.

The UHC representative explained that this is an improved change from the Appellant's prior assessment when her symptoms were exasperated by COVID.

11. Laundry:

Reported: Member reports having some difficulty performing laundry. She reports having a washing machine but denies having a dryer because she got rid of it to save electricity expenses. Member reports washing her clothes in her bathtub and hanging them around her apartment to dry. Member reports she is unable to lift large laundry baskets due to weakness and fatigue but she is able to gather, fold, sort, and put away clothing.

Observed: Member was observed as unable to stand for long periods of time due to fatigue and requires assistance carrying loads of laundry.

The UHC representative explained that this is an improved change from the Appellant's prior assessment when she was weaker due to COVID.

12. Housekeeping:

Reported: Member reports that she can clean up after herself. She does not need assistance with making her bed because she sleeps on her couch. Member reports needing assistance with mopping, sweeping, dusting, vacuuming, and cleaning the bathroom.

Observed: Member was observed being unable to stand for long periods of time and noted that assistance in this category would benefit her.

The UHC representative explained that this is an improved change from the Appellant's prior assessment when she was weaker due to COVID.

13. Shopping:

Reported: Member reports having some difficulty with grocery shopping and picking up medications because she is unable to walk or stand for long periods of time. As a result, Member reports that her CDC worker performs her grocery shopping and picks up her medications. Her CDC worker also puts away her groceries.

The UHC representative explained that this is an improved change from the Appellant's prior assessment when she was weaker due to COVID, unable to write out her shopping list or explain what was needed to her PCA worker at that time.

14. Telephone:

Reported: Member reports having a cell phone and can call 911 in the event of an emergency.

The UHC representative explained that UHC determined (both in 2021 and at the current time) that the Appellant is independent with this task (no change).

15. Finances:

Reported: Member reports CDC worker assists with paying her bills and managing her bank account. Member's grandson manages her finances because he pays her bills electronically.

The UHC representative explained that this is an improved change from the Appellant's prior assessment when she had greater difficulty managing her finances.

16. Medical Appointments:

Reported: Member reports she can ambulate to and from her medical appointments independently.

The UHC representative explained that this is an improved change from the Appellant's prior assessment when she required assistance to attend her medical appointments.

17. Companion:

Reported: Member reports that she does not need a companion.

The UHC representative explained that UHC determined (both in 2021 and at the current time) that the member is independent with this task (no change).

The UHC representative reiterated that because the Appellant was found to need assistance with instrumental activities of daily living, she qualifies for CDC services. As the Appellant was found to be independent in all activities of daily living, she does not qualify for PCA services, in accordance with the pertinent regulations.

The Appellant appeared at the hearing via telephone and testified through an interpreter, as follows: the Appellant rebuts the reported testimony with respect to grocery shopping because she is a nervous person and requires someone to assist her. Additionally, the Appellant is unable to go outside by herself as she recently underwent eye surgery. The Appellant disputes

the testimony given surrounding her toileting and showering because she needs assistance. With respect to cleaning (housekeeping) and laundry, the Appellant testified that while she is able to perform both tasks, she must take breaks in between. The Appellant explained that if she walks for long periods of time, she becomes tired. The Appellant further explained that she is hesitant to bend over for fear of falling. As for meal deliveries, the Appellant testified that she was going to be charged for delivered meals and therefore she cancelled the service. Further, they wanted to take pictures of the Appellant, which she objected to such.⁵

The Appellant further testified that while she presently lives alone, her grandchildren visit her frequently and her granddaughter works for her.⁶ The Appellant explained that she struggles with bathing due to the height of her bathtub and while she prefers female relatives to assist, she requests her grandson to stand behind the bathroom door if her female relatives are not available at the time. The Appellant testified that she walks slowly and is afraid to use stairways unless there are railings in place. With respect to meal preparation, the Appellant testified that she can no longer cook so her daughter brings her take out food. The Appellant explained that she does have some difficulty chewing her food because she does not have any teeth.

The UHC representative testified that the Appellant's previous assessment that took place in 2021 was telephonic due to COVID, with an interpreter also present telephonically. At that time, the Appellant requested 11 daytime hours of PCA assistance, however, 12.25 hours were approved. There were no changes made throughout the pandemic. While the Appellant's current request for 12.25 daytime hours for PCA assistance has been denied, it is because the Appellant has been observed as independent in all activities of daily living. The UHC representative testified that she is not in disagreement with the Appellant needing assistance in at least 6 of her instrumental activities of daily living, which is the reason that she was approved for CDC services. The UHC representative explained that the Appellant, while she has some health concerns, is quite capable of performing her activities of daily living independently.

Findings of Fact

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

1. The Appellant is over the age of 65. (Testimony; Exhibit 3).
2. The Appellant has diagnoses that include chronic fatigue, high blood pressure, chronic pain, transient ischemic attack, and Vitamin B deficiency. (Testimony; Exhibit 6).

⁵ Upon inquiry made at the hearing, the Appellant testified that the person who delivered her meals had requested taking the Appellant's picture for receipt purposes, which the Appellant declined.

⁶ The Appellant explained that her grandchildren assist her with bathing and shopping.

3. The Appellant currently lives alone and in 2021 was previously approved for 12.25 daytime hours of PCA services per week. (Testimony).
4. The Appellant's relatives visit often to check on the Appellant. (Testimony).
5. A registered nurse from UHC completed the current assessment in the Appellant's home on or about April 25, 2023. (Testimony).
6. The Appellant's daughter was present for the April, 2023 assessment. (Testimony; Exhibit 6).
7. Based on the assessment, the Appellant was found to be independent in all activities of daily living. The Appellant was found to need assistance in at least 6 instrumental activities of daily living. (Testimony).
8. UHC denied the Appellant's request for PCA services because it found the Appellant was independent in all activities of daily living. (Testimony; Exhibit 6).
9. The Appellant timely appealed on May 22, 2023. (Exhibit 2).
10. UHC authorized the Appellant to receive assistance with Consumer Directive Care (CDC) services for instrumental activities of daily living. (Testimony).

Analysis and Conclusions of Law

Under 130 CMR 508.010, MassHealth members who are enrolled in managed care plans are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal:

(A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;

(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's disenrollment of a member under 130 CMR 508.003(D)(1), (D)(2)(a), or (D)(2)(b), or discharge of a member from a SCO under 130 CMR 508.008(E); or

(D) the MassHealth agency's determination that the requirements for a member transfer under 130 CMR 508.003(C)(3) have not been met.

The Fair Hearing regulations found at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) 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;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following:

- (a) failure to follow prior-authorization procedures;
- (b) failure to follow referral rules; and
- (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.012: *Time Limits for Resolving Internal Appeals*;

(6) a decision by a managed care contractor (except a behavioral health contractor) to deny a request by a member who resides in a rural service area served by only one managed care contractor (except the behavioral health contractor) to exercise his or her right to obtain services outside the managed

care contractor's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

- (a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the managed care contractor's network;
- (b) the provider from whom the member seeks service is the main source of service to the member, except that member will have no right to obtain services from a provider outside the managed care contractor's network if the managed care contractor gave the provider the opportunity to participate in the managed care contractor's network under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;
- (c) the only provider available to the member in the managed care contractor's network does not, because of moral or religious objections, provide the service the member seeks; or
- (d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the managed care contractor's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410 (130 CMR 422.402). Per 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 of 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);** and (4) the MassHealth agency has determined that the PCA services are medically necessary.

(Emphasis added).

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

- (A) Activities of Daily Living (ADLs). Activities of daily living include the

following:

- (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 basic care such as bathing, personal hygiene, or grooming;
- (4) dressing or undressing: 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 personal care services; and
 - (c) other special needs approved by MassHealth 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 personal care 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

UHC also limits coverage to those services that have been determined to be medically necessary. Per 130 CMR 450.204(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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

In the present case, the Appellant was found to be independent in all activities of daily living. As noted above, MassHealth covers PCA services to eligible members when certain criteria is met, including the member requiring physical assistance with 2 or more activities of daily living. While it is understandable that the Appellant requires some assistance with at least 6 instrumental activities of daily living, as UHC noted, the Appellant was authorized for time with CDC services to assist her with such. This appeal is denied.

Order for United HealthCare

Remove aid pending if it has not already done so.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: United Healthcare SCO, Attn: Susan Coutinho McAllister, MD, LTC
Medical Director, 950 Winter St., Ste. 3800, Waltham, MA 02451, 856-287-2743