

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2305464
Decision Date:	10/10/2023	Hearing Date:	08/24/2023
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:



Appearances for CCA:

Cassandra Horne
Jeremiah Mancuso
Dr. David Mello
Kaley Ann Emery (Observing)
Jennifer Gory (Observing)

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Prior Approval
Decision Date:	10/10/2023	Hearing Date:	08/24/2023
CCA's Reps.:	Cassandra Horne Jeremiah Mancuso Dr. David Mello Kaley Ann Emery Jennifer Gory	Appellant's Rep:	Pro se
Hearing Location:	Board of Hearings (Telephonic)		

Authority

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

Jurisdiction

Through a notice dated June 29, 2023, Commonwealth Care Alliance (CCA), an integrated care organization (ICO) that contracts with MassHealth, notified the appellant that it had denied her Level 1 Appeal regarding her request for coverage of occupational therapy visits (Exhibit 1). The appellant filed a timely appeal with the Board of Hearings on July 5, 2023 (130 CMR 610.015(B); Exhibit 2). The Board of Hearings initially dismissed the appeal for failure to include a copy of the notice prompting the appeal, but vacated the dismissal after the notice was provided (Exhibit 4). Denial of a request for services is a valid basis for appeal (130 CMR 610.032).

Action Taken by ICO

CCA denied the appellant's request for coverage of occupational therapy visits, and then denied her Level 1 Appeal of that initial denial.

Issue

The appeal issue is whether CCA was correct in denying the appellant's request for occupational therapy visits.

Summary of Evidence

Commonwealth Care Alliance (CCA), a MassHealth integrated care organization (ICO), was represented by the operations manager and clinical manager of the appeals and grievances department, as well as by the utilization review medical director. The operations manager testified that the appellant has been a participant in the CCA OneCare program since December 1, 2021. She submitted a request for occupational therapy visits at [REDACTED] for the period of [REDACTED] through [REDACTED] 2023. CCA denied the request on June 6, 2023, finding no medical necessity for the requested services. The appellant filed a Level 1 internal appeal on June 13, 2023, and the case was reviewed by the CCA medical director. On June 29, 2023, CCA denied the Level 1 appeal, stating in part as follows:

After careful consideration, the Level 1 Appeal Reviewer agreed with the initial decision and denied your request for Occupational Therapy. You have no mobility impairments and no Activities of Daily Living (ADLs) impairments that would warrant the need for occupational therapy services. It is not clear that your Instrumental Activities of Daily Living (IADLs) impairments can be best addressed by occupational therapy due to lack of official diagnosis. Additionally, there is limited support for the usefulness of occupational therapy in ADHD and Asperger's Syndrome to support this service. Therefore, given the provided documentation, you do not meet the guidelines for the requested service which does not appear medically necessary. The original decision is upheld, and this First Appeal is denied. Please continue to work with your Care Team to report any changes in your health status. (Exhibit 1)¹

On July 5, 2023, the appellant filed a Level 2 appeal with the Board of Hearings.

The CCA medical director testified that the appellant, who is in her early 30s, has "self-reported diagnoses" of attention deficit hyperactivity disorder (ADHD) and autism spectrum disorder (ASD). He stated that there is no clinical support for either of these diagnoses, and that even so, there is limited proof that OT would be a useful treatment. He pointed out that she has no mobility impairment or other impairments related to her ability to perform activities of daily living (ADLs) and does not have any clear impairments to her instrumental activities of daily living (IADLs) that are best addressed by occupational therapy. The medical director testified that CCA denied the request on the basis that OT services are considered investigational and experimental in the appellant's situation and are not reasonably calculated to effectively address her condition. See 130 CMR 450.204.

The CCA clinical manager acknowledged that CCA previously approved the appellant for OT services, beginning in March 2022 or possibly earlier, and that she received these services until May 2023. He stated that he could not access all of the records but guessed that these visits had been approved at a time (during the pandemic) when CCA was routinely approving such requests

¹ The CCA operations manager added that CCA also sent the case to Maximus, which conducts reviews for Medicare coverage. She stated that Maximus denied the request on July 3, 2023.

without utilization review.

The appellant appeared at the hearing telephonically and testified on her own behalf. She took issue with CCA's characterization of her clinical conditions as "self-reported," maintaining that she has undergone extensive diagnostic tests and that her diagnoses of ADHD and ASD are well-documented. The appellant also expressed disagreement with CCA's position that occupational therapy is not an effective treatment for these disorders, stating that it has been "transformative" for her and that she has regressed in a lot of ways without treatment. She pointed to a notation on the front of CCA's appeal packet that states as follows:

RN Notes: Note for the reviewers the supporting docs from the OT provider indicate a need for continued OT services as member has had a decline s/p moving and her mental health. What the OT is doing is also well documented within these docs (Exhibit 6 at 1).²

The appellant testified that the provider who submitted the request for her has a doctorate in occupational therapy. She argued that the CCA representatives have never met or evaluated her and are not in a position to judge her need for OT services.

Progress reports from the appellant's OT treatment were entered into evidence. The original assessment from the start of therapy, for the period of [REDACTED] to [REDACTED] 2022, includes the following:

- Clinical Impressions/Findings: Client was asked to perform and [sic] organizational skills questionnaire. Concerns from this assessment indicate inability to maintain documentation organization and retrieval, difficulty with time management especially when managing documents, challenges with organization and structure at a workspace, challenges with keeping a daily planner and following it, challenges with delayed task initiation and performance, challenges with prioritizing tasks and following through on such, and has challenges with having structured time for impromptu tasks. . . .
- During occupational therapy assessment client was engaged in collaborative discussion regarding her strengths, weaknesses, and concerns. Client has masters in education and has mental health training. Client is highly self aware and is extremely educated. She states she is constantly concept mapping and feels disorganized and out of place. She is currently interning with an environmental council.
PTSD triggers are highly likely to not be encountered during therapy sessions.
Client states that school was optimal for her, stating there were routines and requirements including a syllabus which helped her to maintain her focus.
Overstimulation occurs with auditory stimulus, which does at least in part step from PTSD, and visual stimulus, such as flashes and fluorescent lights with client presenting at evaluation with where of [sic] sunglasses to compensate.
Current routine: 6:00 AM and 8:00 AM performs ADL, yoga, feeds the cats, feeds herself, and possibly goes for a walk. The rest of the day is generally unstructured except for

² In response, the CCA representatives indicated that this note was written by a clinical nurse reviewer whose role does not include medical necessity determinations.

appointments and intern time.

She can become paralyzed by thoughts, and has not had success with traditional medicine for such. Client describes that she has internal “chaos all the time.” She is currently working with a cannabis doctor who is helping her to manage her symptoms with minimized negative impact of pharmaceuticals.

Inquiry regarding use of music in the background indicates that it generally reduces her tension but states that she becomes hyper fixated on a song and then we’ll [sic] play it repeatedly for an extended period of time. Client gives example of a song which has words to facilitate auditory fixation and recall and was recommended to use classical nonvocal music but she states she has done in the past.

Inquiry regarding sensory needs and therapy animals. Client states she has always been soothed by dogs, and volunteers at a dog shelter. Client is interested in getting service dog but would need financial support for getting the dog and for training.

In general client states that she avoids simple tasks and instead seeks the complex. Clinical impression is that this is related to the ADHD diagnosis. Client performs tapping related to emdr techniques, deep belly breathing, uses a rocking chair, and rocks in a chair in order to facilitate regulation. Clinical impression is that the former is supporting PTSD, anxiety, and depression which the latter is likely to be supporting her ASD sensory needs.

Client was educated on the possibility of neurological involvement and eyesight as being a possible area that can be addressed for client benefit. Client states that she has impaired eyesight. Therapist believes that a neurological optometrist consult could be highly beneficial to the client.

Client reports having social anxiety and that this has increased since COVID-19 since she is unable to read people’s facial expressions when using public transportation of buses.

Body-brain disconnect discussed.

IADL of meal preparation: Client does freezer items and will sometimes be able to cook a meal and put leftovers in the freezer for a later date. Does state that she has challenges with timing, sequencing, and initiating tasks related to meal preparation.

Client indicates she has had increased anxiety recently compared to the past.

Client states that she has received acupuncture with great success but that it only lasts for a few days, cupping did not work.

Client states that overall goals are to develop a routine that can be followed, addressing sensory concerns, and having a creative outlet for her energy. Client states that possible creative outlets are film, media, music, studying but not creating such. Goal also indicated as improvement of functional and utilized organization. With regards to sleep and nighttime routine client states “I don’t know how to unwind,” that she has no night routine, and that she dislikes the dark making sleep and rest highly challenging and an area for occupational therapy to follow and address. At completion of evaluation discussed homework for a client to work on prior to next therapy session. Client was asked to monitor her habits and her night routine. Therapist to work I’m [sic] providing client with a table template to assist in monitoring of routines and rituals, and to work towards development of a syllabus style goal sheet in order to assist her with goal achievement. (Exhibit 3 at 9)

The most recent OT progress report, for the period of [REDACTED] to [REDACTED] 2023, includes the following:

- Summary of Progress/Response to Treatment: Since start of care, [appellant] demonstrates with significant improvements in her ability to perform functionally as follows:
 - Reduced need for visual input reduction devices (esp sunglasses) due to improved ability to manage sensory information at neurological level, more effectively. Requires sunglasses approx. 10% of current therapy sessions compared to 100% of therapy sessions at start of care.
 - At start of care, [appellant] was unable to plan for, shop for, or prepare food for herself. [She] required microwave meals, stating she had concerns with nutritional needs. Currently, client is now able to plan, shop (including via InstaCart), and prepare food for herself and her service animal. At [REDACTED] 23 visit, client indicates she was able to cook primary meals for the next week for both her and her service animal using the oven to complete. She states she has not yet washed the dishes for such, however is pleased she was at least able to complete the cooking successfully.
 - At start of care, client was unable to transition from activity to activity with inability to transition between activities/tasks effectively. [She] is now able to transition effectively and rapidly through the benefit of her service animal; she is able to utilize brief periods of time to perform in home IADLs and personal ADLs since incorporating service animal into her home.
 - Client initially struggled to incorporate physical activity into her routine. Currently, due to the needs and support of her service animal, she is walking with her dog 1-2 times per day for a significant distance in addition to transition outside/inside for dog to use the kennel for toileting needs. She is also incorporating stretching/yoga/exercise into her routine but states she finds it challenging to allocate a particular time for such- client states that today she did some stretching just before therapy session but that she would like to perform for longer duration.
 - Routine/structure have been progressive [sic] steadily over plan of care, with client able to now incorporate multiple 'time blocks' for effective task performance with modifications steadily being integrated for improvement. Since moving to a new environment, client now requires assistance to restructure her routine for health, ability to follow through with chores/responsibilities/self care/shopping and cooking, etc.
- Reason to Continue Skilled Services: Continued OT is required to address the following performance deficits that limit patient's ability to fully engage in occupational and instrumental daily living activities: routine mgmt., social participation, work integration, ADA compliance.
- Rehabilitation Potential: Patient demonstrates good rehab potential as evidenced by Motivated to improve, insight into condition and ability to learn new information [sic].

(Exhibit 6 at 28)

The record also includes notes from other appointments with CCA providers. The report from the most recent appointment, on June 12, 2023, includes the following:

- History of present illness: [REDACTED] year old female seen for virtual TFFT/assess of unmet needs CRN visit. Member with PMH of: [REDACTED] episode of recurrent [REDACTED] Member presented awake/alert and oriented x4. Member reports she saw [REDACTED] prior to this visit for her AWW. Member reports she also met a homemaker from [REDACTED] who member states was very helpful in assisting member with cooking today and member reports task requiring the most difficulty from her are shopping/cooking/regular household and transportation needs. Member states due to her anxiety all tasks present as difficult and impeding on her life. TFFT completed with allotted hours for shopping/cooking/housework, member has access to CCA rides for transportation. Member and writer discussed interest in medminder pharmacy referral and member consented to see clinical pharmacist, member reports anger over OT not being authorized, explained reason re: no auth, documentation from OT was received in GC documents as of 6/12/23 and are waiting to be reviewed. Member assured issue with OT auth will be processed soon. Member requests service dog training for her current dog be covered by CCA as member has to retrain her dog to acclimate to new surroundings due to members move to different geographical location. Member requesting one of the training packages be covered by CCA as dog is less than a year old and has not gone through formal training since move Member reports service dog is "my reason for being able to leave my house" member reports "im [sic] doing so much better because of her" and "I need her in order to function outside of my home" Member reports she has not been able to work since 2019 due to her anxiety levels and her service dog helps tremendously with her anxiety/panic disorder. TFFT reviewed with member, agreed upon 6.5 hrs per week. CP notified, loop closed, Member would be willing to outreach CRN for in person visits in the future. Consider referral to CBH and CHW providers in near future to assess any unmet needs. (Exhibit 6 at 37)

Findings of Fact

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

1. The appellant is a MassHealth member in her early thirties who is enrolled in the Commonwealth Care Alliance (CCA) integrated care organization (ICO).
2. The appellant's medical history includes [REDACTED] There are also reports that she has been diagnosed with attention deficit hyperactivity disorder and autism spectrum disorder.

3. CCA previously approved the appellant for occupational therapy services. She began OT treatment in or around March 2022.
4. At the outset of appellant's OT treatment, she had trouble maintaining organization and structure in the workplace; keeping and following a daily planner; managing delayed task initiation and performance; and prioritizing and following through on tasks. The appellant also experienced sensory overstimulation with auditory and visual stimuli. She experienced challenges with timing, sequencing, and initiating tasks related to meal preparation. The goals for OT treatment included developing routines and addressing her sensory challenges.
5. In May 2023, the appellant's OT provider submitted a request for OT services for the period of [REDACTED] through [REDACTED] 2023.
6. As of the progress report for [REDACTED] and [REDACTED] 2023, the appellant demonstrated significant improvements in her functional ability. Specifically, her need for visual input reduction devices (such as sunglasses) had diminished due to her improved ability to manage sensory information; she was able to plan, shop, and prepare food for herself and her service animal; she was able to transition effectively between activities; she had incorporated physical activity into her routine; and she had progressed with her ability to manage her time for effective task performance. The OT recommended continued services to work on goals including routine management, social participation, and work integration.
7. On June 6, 2023, CCA denied the prior authorization request, finding no medical necessity for the requested OT services.
8. On June 13, 2023, the appellant filed a Level 1 internal appeal.
9. In the course of the Level 1 appeal, a registered nurse for CCA reviewed supplemental clinical records from the OT provider and wrote that these documents "indicate a need for continued OT services" and that "[w]hat the OT is doing is also well documented within these docs."
10. On June 29, 2023, the CCA medical director denied the Level 1 appeal. CCA's reasoning was that the appellant does not have mobility or other ADL impairments that warrant the need for OT services; that it is not clear that her IADL impairments can best be addressed with occupational therapy due to the lack of an official diagnosis; and that there is limited support for the usefulness of occupational therapy to treat ADHD and Asperger's Syndrome.
11. On July 5, 2023, the appellant filed a Level 2 appeal with the Board of Hearings.

Analysis and Conclusions of Law

Under 130 CMR 508.010, MassHealth members who are enrolled in MassHealth-contracted 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 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 508.010: *Time Limits for Resolving Internal Appeals*;

(6) a decision by a managed care contractor to deny a request by a member who resides in a rural service area served by only one managed care 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's *Guidelines for Medical Necessity Determination for Occupational Therapy*³ set forth the following overview of occupational therapy:

Occupational therapy is defined as skilled therapy services, including diagnostic evaluation and therapeutic intervention, which are designed to improve, develop, correct, rehabilitate, or prevent the worsening of functions that affect the activities of daily living (ADLs), including self-care (i.e., bathing, dressing, feeding, grooming, toileting) and instrumental activities of daily living (IADLs) that are impaired or have been reduced as a result of specific disease, injury, or congenital disorder. Skilled occupational therapy programs are designed to improve quality of life by recovering competence and preventing further injury or disability, and to improve the individual's ability to perform tasks required for independent functioning.

The medical necessity guidelines also provide the clinical criteria for MassHealth approval of OT services. Section IIA states in relevant part as follows:

MassHealth bases its determination of medical necessity for skilled occupational therapy services on a combination of clinical data and the presence of indicators that would affect the relative risks and benefits of the service. These include, but are not limited to, the following.

1. The member presents signs and symptoms of functional impairment impacting his or her performance of ADLs and/or instrumental activities of daily living (IADLs) in one or more of the following areas, including, but not limited to
 - a. Sensory ability—problems with sensation, sensory processing, or visual perception;
 - b. Motor ability—problems with range of motion, muscle strength, muscle tone, endurance, balance, dexterity, or coordination;
 - c. Cognitive ability—problems with orientation, concentration (attention loss); comprehension, learning, organization of thought, problem-solving, or memory that impact physical functioning; and

³ The introductory section of the *Guidelines* states that "Providers serving members enrolled in a MassHealth-contracted accountable care partnership plan (ACPP) or managed care organization (MCO) should refer to the ACPP's or MCO's medical policies for covered services." CCA did not point to anything specific in its member handbook regarding the criteria for approval of OT services. Rather, it relied on its own general medical necessity guidelines as well as MassHealth's medical necessity regulation at 130 CMR 450.204(A). Even if not controlling here, MassHealth's *Guidelines for Medical Necessity Determination for Occupational Therapy* are a helpful tool in understanding MassHealth's approach to determining the medical necessity of OT services.

- d. Psychological ability—problems with apathy, depression, anxiety, perceived incompetence, lack of persistence, or decreased coping skills in a social environment impacting physical functioning.

At issue in this case is a denial by Commonwealth Care Alliance, a MassHealth-contracted integrated care organization, of the appellant's request for coverage of occupational therapy services. After a Level 1 internal appeal, CCM again denied the request, and the appellant now seeks relief at the Board of Hearings.

CCA denied the request because it found the appellant has no impairments to her activities of daily living (ADLs) that warrant occupational therapy, and no impairments to her instrumental activities of daily living (IADLs) that are best addressed with OT "due to lack of official diagnosis." CCA also maintained that there is "limited support" of the use of OT services in patients with ADHD or ASD. For these reasons, CCA concluded that OT services are not medically necessary for the appellant. The appellant counters that her diagnoses are well-documented, and that OT services – which CCA has authorized since at least March 2022 – have been "transformative" for her.

The evidence supports the appellant's position. The appellant's medical records document in great detail the functional challenges that flow from the appellant's impairments, including difficulty developing daily routines, planning and following through on tasks, sensory overstimulation, and feelings of social anxiety. Whether these conditions are symptoms of ADHD, ASD, or another diagnosed ailment is less important than the fact that they impact her daily functioning and are the type of problems which, according to the medical necessity guidelines, can properly be treated with occupational therapy. Furthermore, the provider's notes reflect that these services have been effective for her; they document the substantial, positive impact that OT services have had on the appellant's functional ability in several areas during the time that CCA authorized OT services. Though CCA contends that the appellant's impairments are not best addressed with occupational therapy, it has not identified or recommended an alternative form of treatment that would be more appropriate and equally effective.

The appellant has demonstrated the medical necessity of OT services. This appeal is therefore approved.

Order for MassHealth/ICO

Approve the prior authorization request for occupational therapy services.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: ICO Commonwealth Care Alliance
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