

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part; dismissed in part	<b>Appeal Number:</b>	2307056
<b>Decision Date:</b>	11/14/2023	<b>Hearing Date:</b>	09/28/2023
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**



**Appearance for Commonwealth Care Alliance:**

Cassandra Horne, Appeals Grievances Manager, Jeremiah Mancuso, Clinical RN Appeals and Grievance Manager, Kaley Ann Emery, Appeals Supervisor Hannah Guskie, OT, PCA Supervisor



*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

<b>Appeal Decision:</b>	Approved in Part; Denied in Part; Dismissed in Part	<b>Issue:</b>	Senior Care Organization; Prior Authorization, Personal Care Attendant Services
<b>Decision Date:</b>	11/14/2023	<b>Hearing Date:</b>	09/28/2023
<b>CCA Rep.:</b>	Cassandra Horne, et. al.	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 June 23, 2023, Commonwealth Care Alliance (CCA) reduced the appellant's Personal Care Attendant (PCA) Services from 13 day hours and 14 night hours to 6 day hours. *See* Exhibit 6 at 28. The appellant underwent CCA's internal appeals process and received a Denial of Level 1 Appeal on August 9, 2023. *See* Exhibit 6 at 187. The appellant filed this timely appeal with the Board of Hearings on August 22, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. An MCO's decision to provide limited authorization of a requested service is a valid grounds for appeal. *See* 130 CMR 610.032(B)(2).

### Action Taken by Commonwealth Care Alliance

CCA reduced the appellant's allotted PCA service hours effective August 1, 2023.

## Issue

Whether CCA was acting within its discretion in its decision to reduce the appellant's allotted PCA service hours.

## Summary of Evidence

The appellant is a MassHealth member over the age of 65 currently enrolled in CCA's Senior Care Options (SCO) Program. She was represented telephonically at hearing by her daughter and PCA. CCA was also represented telephonically by four members of their appeals team. The following is a summary of the testimony given and documentary evidence provided at hearing:

Members of CCA's SCO Program who submit a request for prior authorization for PCA hours undergo a complete evaluation by the SCO PCA team. In so doing, CCA sends a nurse to the member's home to conduct observations of the member's needs, which then gets sent to the member's personal care management (PCM) agency. The PCM uses that evaluation to submit a prior authorization request to CCA, which is reviewed by CCA's utilization management team. The Utilization Management Team uses MassHealth guidelines, including the Time-For-Task Tool found at Exhibit 6 at 37-48.

In the appellant's case, she underwent an evaluation in May 2022, after which she was approved for approximately 13 day hours and 14 night hours per week. After a February 2023 evaluation, CCA reduced those to 6 day hours per week and no night hours. During the hearing, the following agreements were reached on certain modified tasks:

- Additional 10 minutes per week for hair washing to total 80 minutes per week for bathing.
- Additional 10 minutes per week for fingernail care and 10 minutes per week for hair care to total 34 minutes per week for grooming;
- Additional 1 minute per day for blood pressure monitoring, additional 10 minutes per day for ointment application to total 97 minutes per week for medication assistance;
- 28.5 minutes per week total for medical appointment transportation;
- Additional 10 minutes per week for scheduling medical appointments, additional 7 minutes per day for TED stockings to total 59 minutes per week for special needs.

The remaining modified tasks were regarding mobility, grooming (lotion application), dressing/undressing, and nighttime hours. The following chart details the modifications made by CCA to those areas:

<b>Task</b>	<b>5/2022 Evaluation</b>	<b>2/2023 Evaluation</b>
Mobility	84 minutes/week	0 minutes/week
Grooming (Lotion)	14 minutes/week	14 minutes/week
Dressing/Undressing	56/42 minutes/week	49/35 minutes/week
Nighttime	14 hours/week	0 hours/week

Generally for all tasks, CCA reported and the appellant's representative confirmed that the appellant had a pacemaker inserted in 2022 which has helped improve the appellant's heart condition. The appellant's representative reported that the pacemaker has not helped the appellant's shortness of breath. Her diagnoses include hypertension, eye globe prosthesis, constipation, heart murmur, mild intermittent asthma, prediabetes, among other ailments.

### **Mobility**

In the area of mobility, the CCA nurse reported the appellant require occasional minimum assistance with bed mobility. The CCA nurse observed the appellant to be able to get herself into and out of bed, to ambulate around her home without assistance, and reported that she was able to do three sets of five reps of sitting to standing. It was also reported that the appellant dances two times per week. The appellant's representative testified that the appellant has days that she is more mobile than others but reported that she assists the appellant with getting around the house and helps her get in and out of bed.

### **Grooming (Lotion)**

For lotion application, the CCA representative referred to the Time-For-Task tool, which reflects that an individual requiring minimum assistance with grooming tasks typically receives 10 total minutes per day for all grooming tasks. As a result, the most amount of time CCA could afford the appellant for lotion application for someone with her needs would be five minutes per day. The appellant's representative reported that she applies lotion to the appellant from head to toe every day, and that it takes roughly 15 to 20 minutes.

### **Dressing/Undressing**

With respect to dressing and undressing, the CCA representative testified that the nurse's evaluation reflects that, unlike 2022, the appellant is now able to don her shirt independently, and still needs help with her undergarments and to thread her pants over her legs. She was found to require minimum assistance with dressing and undressing. CCA reported that the Time-For-Task tool indicates an average of 7 minutes for dressing and 5 minutes for undressing for a person who requires minimum assistance. The appellant's representative testified that she assists the appellant with dressing completely; the appellant may be able to feed her shirt sleeves over her hands, but cannot pull the shirt over her head.

## **Nighttime Hours**

For nighttime hours, CCA reported that, as with MassHealth, if a member is approved for any nighttime hours, they get a set total of 14 hours. In the appellant's case, the evaluating CCA nurse noted that the appellant sometimes requires minimum assistance getting back into bed after using the bathroom at night. At hearing, CCA testified that the previous allowance of nighttime hours was due to the appellant's need for assistance with getting out of bed and getting to the bathroom in the middle of the night. They reported that, as the appellant was found not to require assistance with mobility during the day, she should be able to get to the bathroom at night without assistance. The appellant's representative reported assisting the appellant getting into and out of bed and onto and off the toilet.

## **Findings of Fact**

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

1. The appellant is a MassHealth member over the age of 65 who is currently enrolled in CCA's SCO plan. Testimony, Exhibit 4.
2. The appellant's primary diagnoses include hypertension, constipation, and mild intermittent asthma. She had a pacemaker inserted in 2022 to treat conditions related to her heart. Testimony, Exhibit 6 at 15, 80.
3. In May 2022, CCA conducted an assessment of the appellant's PCA service needs and afforded her 13 day hours and 14 night hours per week of PCA services. Exhibit 6 at 1, 28.
4. In February 2023, CCA conducted an in-home assessment of the appellant and, after the complete evaluation, reduced the appellant's PCA hours to 6 day hours and no night hours per week. Exhibit 6 at 28.
5. The appellant underwent the CCA internal appeal process, which resulted in a denial letter being issued on August 9, 2023. Exhibit 1.
6. The appellant filed a timely appeal with the Board of Hearings on August 22, 2023. Exhibit 2.
7. At hearing, the appellant and CCA agreed to the following modifications of the appellant's PCA services:
  - Additional 10 minutes per week for hair washing to total 80 minutes per week for bathing.
  - Additional 10 minutes per week for fingernail care and 10 minutes per week for hair care to

total 34 minutes per week for grooming;

- Additional 1 minute per day for blood pressure monitoring, additional 10 minutes per day for ointment application to total 97 minutes per week for medication assistance;
- 28.5 minutes per week total for medical appointment transportation;
- Additional 10 minutes per week for scheduling medical appointments, additional 7 minutes per day for TED stockings to total 59 minutes per week for special needs.

8. Regarding Mobility, the appellant was found to require occasional minimum assistance and was observed being able to transfer in and out of bed, was able to ambulate around the house, and was able to get from a sit to stand position multiple times. Exhibit 6 at 90.

9. Regarding Dressing and Undressing, the appellant was found to require minimum assistance and is typically able to don a basic tee shirt independently. *Id.*

10. Regarding Grooming, the appellant requires moderate assistance. *Id.* Standard of care for lotion application would amount to five minutes per day. Testimony, Exhibit 6 at 40.

11. Regarding Nighttime Toileting, the appellant was found to require minimum assistance. She is able to transfer off the bed and ambulate to the bathroom at night, but requires occasional assistance getting back into bed. Exhibit 6 at 90.

## **Analysis and Conclusions of Law**

MassHealth has contracted with individual private insurance companies, referred to as managed care organizations (MCOs), to deliver care to relevant members under the regulations. *See* 130 C.M.R. One such type of MCO is a senior care organization (SCO), designed to manage the care of certain MassHealth members over the age of 65. Massachusetts law defines an SCO as “a comprehensive network of medical, health care, and social service providers that integrates all components of care, either directly or through subcontracts.” M.G.L. ch. 118E § 9D(a). Further, “SCOs will be responsible for providing enrollees with the full continuum of Medicare and MassHealth covered services.” The MassHealth regulations establish the member selection process for SCOs at 130 C.M.R. 508.008.

An SCO has specific statutory and regulatory requirements by which it must abide regarding the scope of its coverage and its internal appeal process. “[T]he amount, duration, and scope of Medicaid-covered services shall be at a minimum no more restrictive than the scope of services provided under MassHealth standard coverage.” M.G.L. ch. 118E § 9D(d). In essence, the SCO must provide everything under the MassHealth regulations and may have services or coverage that range beyond the scope of those provided by MassHealth.

MassHealth regulations apply to SCOs and provide that “[m]embers are entitled to a fair hearing

under 130 C.M.R. 610.00: MassHealth Fair Hearing Rules to appeal...a determination by...one of the...SCOs...if the member has exhausted all remedies available through the contractor's internal appeals process." 130 C.M.R. 508.010(B). This obligates an SCO to follow the fair hearing rules when defending decisions before the Board of Hearings.

Typically, "[a]ll medical services to members enrolled in an MCO...are subject to the prior authorization and referral requirements of the MCO." 130 C.M.R. 508.004(2). In this case, the CCA representatives testified, and their submitted documentation confirmed, that they rely upon the MassHealth guidelines in reviewing prior authorization requests for PCA services. See Exhibit 6 at 50-56. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.<sup>1</sup>
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

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<sup>1</sup> ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (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.

130 CMR 450.204(A)-(B). CCA relies on the Time for Task tool in evaluating a member's prior authorization request for PCA services and how much time to allow for each requested task. See Exhibit 6 at 37-48. The appellant has the burden "to demonstrate the invalidity of the administrative determination." *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228 (2007).

At hearing, the appellant and CCA agreed to the following modifications of PCA hours:

- Additional 10 minutes per week for hair washing to total 80 minutes per week for bathing.
- Additional 10 minutes per week for fingernail care and 10 minutes per week for hair care to total 34 minutes per week for grooming;
- Additional 1 minute per day for blood pressure monitoring, additional 10 minutes per day for ointment application to total 97 minutes per week for medication assistance;
- 28.5 minutes per week total for medical appointment transportation;
- Additional 10 minutes per week for scheduling medical appointments, additional 7 minutes per day for TED stockings to total 59 minutes per week for special needs.

As the discussed agreements resolve the appeal regarding those areas, the appeal is hereby DISMISSED with respect to those tasks. Thus, remaining at issue are the following areas: mobility, grooming (lotion application), dressing/undressing, and nighttime hours.

### **Mobility**

In the area of mobility, CCA provided credible evidence that the appellant only occasionally requires minimum assistance with mobility. As the need for assistance with mobility is not chronic, it does not meet the requirements of 130 CMR 422.403 (C). Although the appellant's representative explained that she does need help, no other evidence was provided to bolster that assertion, nor was any counter provided to the testimony that the appellant is able to dance two days per week. Thus, the appellant has not met her burden of proof that CCA improperly denied PCA hours for assistance with mobility. The appeal with respect to mobility is DENIED.

### **Dressing/Undressing**

In the area of dressing/undressing, CCA relied on its Time-For-Task guidelines set forth by MassHealth in allowing 7 minutes per week for dressing and 5 minutes for undressing. The appellant was found to require one minute less per day for each task because she was observed to be able to don her shirt independently. Although the appellant's representative reported that the



appellant can feed the sleeves through her hands but cannot pull it over her head, the CCA nurse reported observing the appellant do just that. Thus, the appellant has not met her burden of proof that CCA improperly modified PCA hours for assistance with dressing and undressing. The appeal with respect to dressing and undressing is DENIED.

### **Grooming (Lotion)**

In the area of dressing/undressing, CCA relied on its Time-For-Task guidelines set forth by MassHealth in agreeing to approve 5 minutes per day for lotion application. The appellant's representative reported that it takes roughly 15-20 minutes to apply lotion thoroughly. However, no evidence was provided as to why the appellant's allotted time for lotion application is more complicated than or should deviate from a typical member. Thus, as per the agreement at hearing, CCA is ordered to provide 5 minutes per day for lotion application. The appeal with respect to lotion application is APPROVED.

### **Nighttime Hours**

For assistance at night, CCA reported that the appellant was not found to need assistance getting out of bed to go to the bathroom at night and only sometimes requires assistance getting back into bed. The appellant's representative testified that she helps the appellant get into and out of bed and onto and off of the toilet during the night. However, no time was given for toileting assistance, nor did the appellant report requiring any assistance with getting onto and off the toilet, and where the appellant was found not to need assistance with mobility during the day, it logically follows that she should be independent with mobility at night. Thus, the appellant has not met her burden of proof that CCA improperly denied nighttime PCA hours. The appeal with respect to nighttime hours is DENIED.

To summarize, CCA must now afford the appellant the agreed to PCA hours as discussed at hearing, along with an additional 5 minutes per day for lotion application. As a result, the appeal is approved in part, denied in part, and dismissed in part.

## **Order for Commonwealth Care Alliance**

Reinstate the agreed to and ordered PCA hours retroactive to August 1, 2023, and remove Aid Pending.

## **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.

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Mariah Burns  
Hearing Officer  
Board of Hearings

cc:

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