

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Remanded	Appeal Number:	2307534
Decision Date:	12/01/2023	Hearing Date:	10/19/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

Pro se via telephone

Appearance for Senior Care Organization (SCO):

Cassandra Horne, Appeals and Grievances
Manager (the appeals manager)
Hannah Guskie, Supervisor SCO PCA Team (the
PCA representative)
Kaley Ann Emery, Appeals Supervisor
Michelle Sheppard (Observing)
Kathleen Mastorakis (Observing)

via telephone



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part; Approved in part; Remanded	Issue:	Managed Care/Personal Care Attendant
Decision Date:	12/01/2023	Hearing Date:	10/19/2023
SCO's Rep.:	Cassandra Horne; Hannah Guskie; Kaley Ann Emery; Michelle Sheppard; Kathleen Mastorakis	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Quincy Harbor South		

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 August 17, 2023, the SCO denied the appellant's Level 1 appeal concerning the reduction of her PCA hours. (See 130 CMR 508.008; 422.000 et seq. and Exhibit (Ex.) 3). The appellant filed this appeal in a timely manner on August 26, 2023. (See 130 CMR 610.015(B) and Ex. 1). A managed care provider's decision to deny authorization of a requested service, including the type or level of service, including determinations based on the type or level of service, requirements for medically necessity, appropriateness, setting, or effectiveness of a covered benefit is valid grounds for appeal. (See 130 CMR 610.032(B)(2)).

On August 28, 2023, the Board of Hearings sent the appellant a letter notifying her that it would dismiss her appeal within 10 days unless she submitted an entire copy of the notice she was appealing. (Ex. 2). The appellant submitted the requested notice by mail on September 15, 2023. (Ex. 3). Once it received this submission, the Board scheduled the appellant's hearing. (Ex. 6).

Action Taken by SCO

The SCO reduced the number of hours of PCA services appellant received.

Issue

The appeal issue is whether the SCO was correct, pursuant to 130 CMR 508.008 and 422.001 *et seq.*, in determining that the appellant's PCA services should be reduced.

Summary of Evidence

According to information submitted by the SCO prior to the hearing, the appellant is an individual over the age of 65. (Ex. 7, pp. 2, 5). The appellant lives with her grandson, who is an adult. (Ex. 7, pp. 2, 5). According to this documentation, the appellant's diagnoses include rheumatoid arthritis, osteoarthritis, anemia of chronic disease, history of carpal tunnel surgery, a history of ST-Segment Elevation Myocardial Infarction with stents placed, left sided numbness, dizziness, diabetes mellitus (on insulin pump), deafness/hardness of hearing (bilateral hearing aids worn), shoulder pain, depression, trigger finger, eczema and a history of right ankle fracture and repair. (Ex. 7, p. 5).

The appeals manager testified to the following. The appellant has been enrolled in the SCO Program since September 1, 2022. The appellant appealed the SCO's reduction of her PCA services from 21.5 day and evening and 14 night hours per week to 15 day and evening hours per week with no night services. The SCO issued a notice informing the appellant of this determination on July 11, 2023. (Ex. 7, pp. 41-50). The appellant appealed the determination on August 4, 2023. (Ex. 7, p. 51). The SCO denied the appellant's appeal on August 17, 2023. (Ex. 7, pp. 234-232). The appellant did not qualify to receive aid pending during the pendency of the appeals because she did not submit them in a timely manner for aid pending.

Certain issues were settled during the course of the hearing. As a result of the appellant's testimony, the PCA representative fully overturned the determinations for ambulation and transfers, which increased from 8 to 42 minutes per week; and grooming, which increased from 19 to 21 minutes per week. The PCA representative offered, and the appellant accepted, partial increases to the modified times for changing the cartridge of her insulin pump to 21 minutes per week and bathing to 105 minutes per week. The appellant accepted the modified time for meal preparation, which was 45 minutes per day or 315 minutes per week. The appellant also accepted the elimination of time for assistance with toileting/bowel.

1. Dressing and Undressing

The MassHealth representative stated that in 2022 the SCO determined that the appellant required moderate assistance with dressing. At that time, the appellant needed help getting her arms into her shirt, pants over her feet, as well as putting on her socks and shoes. At that time, the

SCO determined that the appellant required seven minutes per day for dressing and five minutes per day for undressing, a total of 84 minutes per week. During the 2023 evaluation, it was reported that the appellant now required only minimum assistance with dressing. (Ex. 7, p. 92). The appellant still required assistance with upper body dressing and putting on her socks, shoes, and brace but was independent for other lower body dressing. (Ex. 7, p. 92). The appellant's time for dressing was reduced to five minutes per day and undressing to three minutes per day, a total of 56 minutes per week. (Ex. 7, p. 92).

The appellant stated that she had difficulty putting on a shirt if it required that she raise her arms over her head. The appellant confirmed that she had trouble putting on her socks and shoes but stated that she also has difficulty with pants as well. The appellant stated that it generally took her 10 to 15 minutes to dress. The appellant did not know how the evaluator concluded that she required minimum assistance with dressing and denied telling the evaluator this. The appellant stated that she had trouble undressing at night and then putting on her pajamas. The appellant, however, could not provide a detailed description of the amount of time it required for her to undress as she is generally heavily medicated at that time.

2. Toileting

The PCA representative stated that toileting involves assistance with both bowel and bladder, including hygiene, clothing management, and changing of incontinence briefs. As stated above, the appellant accepted the SCO's elimination of assistance with toilet/bowel. Regarding assistance with toilet/bladder, in 2022, the appellant was reported as requiring moderate assistance with all toiletings. At that time the appellant was approved for six minutes, six times per day, or 252 minutes per week, for bladder. During the 2023 evaluation, the appellant reported being able to change her incontinence briefs independently. The appellant reported requiring assistance to change her clothes when wetness soaked through the incontinence briefs. The evaluator reported that the appellant demonstrated the ability to perform toilet transfers. For that reason, the appellant was approved for three minutes, six times per day or 126 minutes per week for assistance with bladder care.

The appellant stated that she did still require assistance with changing her incontinence briefs and was not independent. The appellant also stated that she was urinating more frequently because she has been told to drink more water because her blood sugar is always high. The appellant did not know how long it took to perform assistance with her bladder care or how frequently she required that assistance.

3. Nighttime Toileting

The PCA representative stated that in 2022 the SCO approved 14 hours per week to the appellant for assistance with toileting at night. During the 2023 evaluation, the appellant reported that she goes to bed late but when she does sleep, she does not need assistance with toileting. The PCA representative stated that this time was given primarily to assist the appellant with bed transfers

in addition to the other sub-tasks involved with toileting.

The appellant testified that she did not sleep through the night but did use the toilet a couple of times after falling asleep. The appellant then said that she did not require assistance currently. The appellant stated that the PCA leaves the appellant's portable toilet near her bed before leaving for the day so it would be convenient for the appellant to use at night. Sometimes the appellant is not able to use it, especially if she needs to have a bowel movement. The PCA representative asked the appellant what times she would wake up at night to go to the bathroom. The appellant stated that she did not generally go to sleep until 4:00 a.m. but that she would wake up around 6:00 a.m. in order to use the bathroom. The appellant stated that she calls her grandson half the time to assist her with getting out of bed, but she did not want him helping with the other aspects of toileting.

Findings of Fact

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

1. The appellant is an individual over the age of 65. (Ex. 7, pp. 2, 5).
2. The appellant lives with her grandson, who is an adult. (Ex. 7, pp. 2, 5).
3. The appellant's diagnoses include rheumatoid arthritis, osteoarthritis, anemia of chronic disease, history of carpal tunnel surgery, a history of ST-Segment Elevation Myocardial Infarction with stents placed, left sided numbness, dizziness, diabetes mellitus (on insulin pump), deafness/hardness of hearing (bilateral hearing aids worn), shoulder pain, depression, trigger finger, eczema and a history of right ankle fracture and repair. (Ex. 7, p. 5).
4. The appellant has been enrolled in the SCO Program since September 1, 2022. (Testimony of the appeals manager).
5. The appellant appealed the SCO's reduction of her PCA services from 21.5 day and evening and 14 night hours per week to 15 day and evening hours per week with no nighttime services. (Testimony of the appeals manager).
6. The SCO issued a notice informing the appellant of this determination on July 11, 2023. (Testimony of the appeals manager; Ex. 7, pp. 41-50).
7. The appellant appealed the determination on August 4, 2023. (Testimony of the appeals manager; Ex. 7, p. 51).
8. The SCO denied the appellant's appeal on August 17, 2023. (Testimony of the appeals manager; Ex. 7, pp. 234-232).

9. The appellant did not qualify to receive aid pending during the pendency of the appeals because she did not submit the appeal in a timely manner for aid pending. (Testimony of the appeals manager).
10. Certain issues were settled during the course of the hearing:
 - a. As a result of the appellant's testimony, the PCA representative fully overturned the determinations for ambulation and transfers, which increased from 8 to 42 minutes per week; and grooming, which increased from 19 to 21 minutes per week;
 - b. The PCA representative offered, and the appellant accepted, partial increases to the modified times for changing the cartridge of her insulin pump to 21 minutes per week and bathing to 105 minutes per week;
 - c. The appellant accepted the reduction of time for meal preparation, which was 45 minutes per day or 315 minutes per week and the elimination of assistance with bowel care. (Testimony of the PCA representative; Testimony of the appellant).
11. In 2022, it was determined that the appellant required moderate assistance with dressing and undressing, specifically needing help getting her arms into her shirt, pants over her feet, as well as putting on her socks and shoes. (Testimony of the PCA representative).
12. At that time, the SCO determined that the appellant required seven minutes per day for dressing and five minutes per day for undressing, a total of 84 minutes per week. (Testimony of the PCA representative).
13. During the 2023 evaluation, it was reported that the appellant required minimum assistance with dressing. (Ex. 7, p. 92).
14. The appellant's time for dressing was reduced to five minutes per day and undressing to three minutes per day, a total of 56 minutes per week. (Ex. 7, p. 92).
15. In the hearing, the appellant stated that she actually continues to have difficulty putting on a shirt if it requires that she raise her arms over her head, has difficulty with putting on pants, and confirmed that she had trouble putting on her socks or shoes. (Testimony of the appellant).
16. The appellant stated that she had trouble undressing at night and putting on her pajamas. (Testimony of the appellant).
17. The appellant stated that it generally took her 10 to 15 minutes to dress but could not state with certainty how much time it took for her to undress. (Testimony of the appellant).

18. In 2022, the appellant was reported as requiring moderate assistance with toileting and was approved for six minutes, six times per day, or 252 minutes per week, for bladder care. (Testimony of the PCA representative).
19. During the 2023 evaluation, the appellant reported being able to change her incontinence briefs independently but still requiring assistance to change her clothes when she soaked through the incontinence briefs. (Testimony of the PCA representative).
20. The SCO approved three minutes, six times per day or 126 minutes per week for assistance with bladder care. (Testimony of the PCA representative).
21. The appellant testified that she did require assistance with changing her incontinence briefs and was not independent and that she urinated more frequently because she was told to drink more water because her blood sugar is always high. (Testimony of the appellant).
22. In 2022 the SCO allotted 14 hours per week to the appellant for nighttime assistance with toileting. (Testimony of the PCA representative).
23. During the 2023 evaluation, the appellant reported that she goes to bed late but once asleep she does not need assistance with toileting. (Testimony of the PCA representative).
24. At the hearing, the appellant stated that she does go to bed around 4:00 a.m. but awakens around 6:00 a.m. in order to go to the bathroom. (Testimony of the appellant).
25. The appellant sometimes requires the assistance of her grandson to help her with transfers when going to the bathroom at night, but she will not let him assist with the other aspects of toileting. (Testimony of the appellant).

Analysis and Conclusions of Law

MassHealth members who are 65 years of age or older may enroll in an SCO pursuant to 130 CMR 508.008(A). (130 CMR 508.001(C)). When a member chooses to enroll in an SCO in accordance with the requirements under 130 CMR 508.008, the SCO will deliver the member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. (130 CMR 508.008(C)). The covered services include those services provided pursuant to MassHealth's PCA program. (See 130 CMR 422.401 *et seq*).

Through the PCA program, MassHealth (via the SCO) covers activity time performed by a PCA in aiding with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). (130 CMR 422.411(A)). ADLs include certain specified activities that are fundamental to an individual's self-care and include physically assisting a member to dress or undress and physically assisting a member with bowel or bladder needs. (130 CMR 422.402; 422.410(A)(4),(7)).

MassHealth does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if 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 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 MassHealth. (130 CMR 450.204(A)).

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(B)). Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines. (130 CMR 450.204(D)).

During the course of the hearing, the SCO and the appellant resolved issues concerning certain ADLs and one IADL. After hearing the appellant's testimony, the PCA representative overturned the SCO determinations concerning ambulation and transfers, which increased from 8 to 42 minutes per week; and grooming, which increased from 19 to 21 minutes per week. The PCA representative partially overturned modifications for changing the cartridge in her insulin pump, which increased to 21 minutes per week, and bathing, which increased to 105 minutes per week. The appellant accepted this partial increase. Finally, the appellant accepted the reduction in her assistance with meal preparation and the elimination of assistance with bowel care. An acting entity may make an adjustment to the matters at issue before or during an appeal period. (130 CMR 610.051). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (130 CMR 610.051(B)). With respect to these issues, this appeal is DISMISSED.

With regards to two of the three remaining ADLs, the appellant has shown, by a preponderance of the evidence, that she continues to require more time for these than the amount SCO approved. The record shows that in reducing the appellant's assistance for dressing and undressing, as well as toileting, the SCO relied on reports that the appellant was either required minimal assistance or was independent with certain aspects of those activities. In the previous year she had reported requiring greater assistance in those areas and was accordingly allotted a greater amount of time. At the hearing, the appellant provided detailed testimony that she continues to require assistance at a greater level than reported during the evaluation. It is felt that for this reason, the times for these two ADLs should be increased but it is unclear from the record whether the time should be increased to the level she received in 2022. For that reason, the appeal is APPROVED IN PART but REMANDED to permit a new evaluation be performed concerning the level of assistance the appellant requires for these ADLs.

As for night-time toileting, the record clearly demonstrates that she does not require two hours

per night. Although the appellant testified that she required some assistance with toileting but did not state that she requires assistance before she goes to sleep at 4:00 a.m. The appellant did report that she may wake up at 6:00 a.m. to toilet but according to PCA rules, this would be considered as day/evening assistance. For that reason, with regards to night hours for toileting the appeal is DENIED.

Order for the SCO

The SCO should recalculate the number of hours of PCA services in accordance with what was agreed in the hearing, as well as what was determined in this decision:

1. Ambulation and transfers: 42 minutes per week;
2. Grooming: 21 minutes per week;
3. Insulin pump: 21 minutes per week;
4. Bathing: 105 minutes per week;
5. Dressing and undressing: Increase but remanded for reassessment; and
6. Toileting/bladder care: Increase but remanded for reassessment.

The SCO should issue a new notice (without appeal rights) informing the appellant of her new PCA hours. All changes should be effective from the beginning of the prior authorization period.

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 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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