

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2308749
<b>Decision Date:</b>	12/19/2023	<b>Hearing Date:</b>	10/25/2023
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	11/9/2023

**Appearance for Appellant:**

Pro se

**Appearance for Commonwealth Care Alliance (CCA):**

Cassandra Horne, Appeals and Grievances Manager

Jeremiah Mancuso, Clinical RN Appeals and Grievances Manager

Kaley Ann Emery, Appeals 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	<b>Issue:</b>	MCO, prior authorization
<b>Decision Date:</b>	12/19/2023	<b>Hearing Date:</b>	10/25/2023
<b>CCA's Rep.:</b>	Cassandra Horne, Jeremiah Mancuso, Kaley Ann Emery	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy (remote)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

By notice dated September 14, 2023, Commonwealth Care Alliance (CCA), a MassHealth Integrated Care Organization (ICO), denied Appellant's Level I appeal for prior authorization of professional organizer services. Exhibit 1. Appellant filed this appeal in a timely manner on September 22, 2023. Exhibit 2. 130 CMR 610.015(B). Denial of assistance is a valid basis for appeal. 130 CMR 508.010, 130 CMR 610.032(B). The hearing record was held open through November 10, 2023 for the submission of additional evidence. Exhibit 7.

### Action Taken by Respondent

CCA denied Appellant's prior authorization request for professional organizer services.

### Issue

The appeal issue is whether CCA was correct in denying Appellant's prior authorization request.

## Summary of Evidence

CCA's representatives, including an appeals and grievances supervisor, nurse review manager, and appeal supervisor appeared by phone and provided written materials in support. Exhibits 4 and 5.<sup>1</sup> Appellant appeared by phone and submitted written materials in support. Exhibit 6. A summary of testimony and written materials follows.

Appellant has been enrolled in CCA's OneCare program since December 1, 2021. On or about August 1, 2023, Appellant requested coverage of eight hours of professional organizing services offered by Carol Ehrlich, RN, MBA. Appellant made the request reporting that she had moved to a new residence in April 2023 and needed assistance unpacking and sorting. On August 14, 2023, CCA denied this request as a noncovered service. CCA approved a one-time, eight-hour block of heavy chore services to assist Appellant with the unpacking and sorting of her moving boxes. CCA determined that the same outcome of the requested organizing service by an out-of-network provider was achievable through a covered benefit (heavy chore services).

On August 18, 2023, Appellant appealed CCA's denial. After review by a medical director, on August 29, 2023, CCA upheld the original denial. On September 14, 2023, CCA mailed written notice of the Level I denial to Appellant. Exhibit 1.

CCA testified that the services requested are a non-covered benefit, as CCA does not cover organization services as provided by Carol Ehrlich. Organization is covered by CCA's heavy chore service, for which Appellant was approved. CCA testified during the internal appeal process, Appellant raised the issue that one of the vendors identified as being able to provide the heavy chore services for Appellant only had male workers, which was understandably unacceptable for Appellant given her medical conditions. However, CCA testified that other vendors in the area could provide the service. Per the August 11, 2023 Minimum Data set completed by CCA's Registered Nurse, Appellant is independent but has difficulty with ordinary housework. *Id.* at 1, 143. CCA's case note indicated that Appellant had been approved for 6.5 hours per week of homemaker services weekly, but Appellant had requested that homemaking services be stopped due to having anxiety around her homemaker. Exhibit 4 at 1.

CCA's medical necessity guidelines allow for prior authorization of non-covered benefit if certain criteria are met. Exhibit 4 at 37-38. These guidelines include limitations and exclusions, or instances when the non-covered benefit will not be approved. Here, CCA denied the request because it determined that the "anticipated outcome can be achieved through an alternate covered benefit." *Id.* at 38. CCA argued that the covered heavy chore service would achieve the same outcome Appellant seeks. Additionally, CCA will not approve the non-covered benefit unless

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<sup>1</sup> CCA submitted the wrong packet prior to hearing. On October 30, 2023, CCA submitted the relevant documents to the Board of Hearings and Appellant. The relevant case documents are marked Exhibit 4 and the incorrect submission is not part of the hearing record.

a network provider cannot cover the benefit, in which case it would have to develop a letter of agreement (LOA) with the out-of-network provider. *Id.* CCA argued that there are multiple network providers who offer chore services. Finally, the additional services raised by Ms. Ehrlich in her letter of support, such as coaching, which were not considered part of the organizing service, can be performed by other covered providers.

Appellant argued that the approved heavy chore services are not the same as what Ms. Ehrlich provides. Appellant has used Ms. Ehrlich's services in the past, paying out of pocket when Appellant had more resources. Therefore, Appellant is comfortable having Ms. Ehrlich in her home. Appellant argued that having a stranger in her home will exacerbate her symptoms.

Appellant identified diagnoses of post-traumatic stress disorder (PTSD), attention-deficit hyperactivity disorder (ADHD), and autism as the conditions that affect her ability to perform the service requested. Appellant moved to a new residence in April 2023 and is unable to unpack and organize her home due to these conditions. Appellant testified that she becomes overwhelmed with starting the task, will have flashbacks of breaking items that trigger her PTSD, and is overall dysregulated by the piles and boxes in her home. Appellant described her responses to this task as visceral and physiological, describing that she would not be able to focus, would find herself rocking and/or paralyzed. Appellant anticipated that she will panic and experience peril if a stranger performs these tasks in her home. When asked if the heavy chore worker could unpack while Appellant was not at home, Appellant responded that part of Ms. Ehrlich's approach is to teach and educate her, including Appellant in the process. This will assist Appellant in her functioning after the session has ended.

In the past, Appellant had Ms. Ehrlich assist her with organizing on a seasonal or bi-yearly basis. Appellant argued that Ms. Ehrlich assists her with organizing and removing the clutter. Appellant would do well, but then the clutter would pile up again and become unmanageable. Appellant did not see an occupational therapist (OT) at the time. Appellant argued that she would only need Ms. Ehrlich to provide her services once, then Appellant anticipated she could continue thriving with the other supports she has in place such as weekly OT.

Regarding Ms. Ehrlich's status as a medical provider, Appellant testified that she is a registered nurse and specializes in Appellant's disorders. A letter from Ms. Ehrlich provided at hearing stated that she has worked with Appellant over several years to assist her "with uncluttering, organizing, and maintenance of newly developed systems to help her with her ADL." Exhibit 6. Ms. Ehrlich wrote that Appellant's abilities are limited by her severe anxiety and PTSD. Ms. Ehrlich stated that working side by side with a known, trusted professional is "the fastest and most regulating way to provide effective disability accommodations." *Id.* Ms. Ehrlich also wrote that "[a]s a Registered Nurse, I specialize in mental health disorders that make attention and concentration so difficult, and help initiate decision making and facilitate situations where [Appellant] needs to take a break with her assistance animal." *Id.* Ms. Ehrlich requested approval for "a one-time 8 hour work day to unclutter her living space, donate/discard unneeded items, organize a home office, maximize

closet space, create storage locations, and develop drawer organization. [Appellant] has not been able to initiate these tasks independently since moving [REDACTED] 2023.” *Id.* Further documentation from Ms. Ehrlich indicated that her fees are \$100/hour plus \$50/hour for travel time. Exhibit 11.

The hearing record was held open through November 7, 2023 for Appellant to submit records supporting the medical necessity of her request and other information. CCA’s deadline to review and respond was November 10, 2023. Exhibit 7.

In her post-hearing submission, Appellant refuted information contained in CCA’s hearing submission. Appellant noted that a CCA representative wrote in team emails discussing this request, that Appellant was using manipulative language to get her request approved (“it is far more likely that she [Appellant] is uncomfortable with an unpacked room and she is using loaded words in an effort to get what she wants”) and referenced a personality disorder diagnosis. Exhibit 4 at 82-84. Appellant argued that she does not have a personality disorder, she had never met the person who asserted this, and that the conclusion reached by this individual was discriminatory and stigmatizing. The file also indicated that another CCA representative, also unknown to Appellant, reported that Appellant’s disorders are self-diagnosed, due to resistance to evaluations. *Id.* at 87. Appellant refuted this, offering evidence of testing that resulted in her diagnoses of PTSD, anxiety disorders, ADHD, and autism by a neuropsychologist in 2021. Exhibit 9.

On November 7, 2023, Appellant’s OT wrote a letter in support of the request, stating:

Due to historical trauma experiences and the consequence of dysregulation halting functional performance, [Appellant] requires the support of a Professional Organizer that she has a preestablished rapport with. ... Carol is a trained Registered Nurse who has additional expert insight compared to the traditional organizational expertise.

Exhibit 10.

The OT wrote that since Appellant was forced to change residence in April 2023, she continues to have unpacked belongings. The OT wrote that the stress from the delay in having unpacked

has caused progressive neurological dysregulation. Due to symptoms related to her diagnoses of Autism, ADHD, and history of trauma, [Appellant] has neurologically heightened chemical and electrical responses to stimuli requiring significant structure for daily success. In this current, new, environment this structure has been unable to be created without a Professional Organizer. Attempts to address this during her occupational therapy services have yielded minimal overall effect compared to global need, due to the specialty role of a Professional Organizer.

*Id.* The OT wrote that Appellant has attempted to use her past learning from Ms. Ehrlich to

independently develop structure for daily function, but has experienced traumatic flashbacks causing severe dysregulation. *Id.* Appellant has managed to avoid unhealthy coping mechanisms but “has utilized all her neurological energy to prevent unhealthy coping. This further prevents [Appellant] from being able to independently develop structure for her routine.” *Id.* The OT wrote that Ms. Ehrlich’s service “can assist with creating structure in the Bedroom and Office, facilitating effective access to functional objects and to promote a functional space for Activities of Daily Living and Instrumental Activities of Daily Living.” *Id.* Finally, the OT wrote that

The alternative from CCA of having a “heavy chore” support worker will not satisfy the needs that [Appellant] has:

1. A heavy chore worker would be disruptive to the learning process in facilitating a functional environment over the long term
2. [Appellant] requires lowered trauma responses through a pre-established relationship (through the use of Carol Erlich)
3. [Appellant] is requesting the use of the Professional Organizer, Carol Erlich, as a reasonable accommodation for her needs related to her disabilities

*Id.*

CCA did not submit a timely response to Appellant’s submission. Eleven days after its record open deadline, on November 21, 2023, CCA wrote, in full:

CCA reviewed the additional information and will stand on the denial. While there may be a benefit to the member on using Carol, it is a non-covered benefit being requested by a non-contracted provider. This doesn’t supersede using our covered benefits and INN providers.

Exhibit 12.

## Findings of Fact

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

1. Appellant is a member of CCA, a MassHealth ICO.
2. On or about August 1, 2023, CCA received Appellant’s request eight hours of professional organizing services offered by Carol Ehrlich, RN, MBA. Exhibit 4 at 26.
3. On August 14, 2023, CCA denied this request as a noncovered service. CCA approved a one-time, eight-hour block of heavy chore services to assist Appellant with the unpacking

and sorting of her moving boxes.

4. On August 18, 2023, Appellant appealed CCA's denial. After review by a medical director, on August 29, 2023, CCA upheld the original denial.
5. On September 14, 2023, CCA mailed written notice of the Level I denial to Appellant. Exhibit 1.
6. Appellant filed a timely appeal to the Board of Hearings on September 22, 2023. Exhibit 2.
7. Appellant's diagnoses include PTSD, anxiety disorders, ADHD, and autism. Exhibit 9.
8. Per the August 11, 2023 Minimum Data set completed by CCA's Registered Nurse, Appellant is independent but has difficulty with ordinary housework. *Id.* at 1, 143.
9. Appellant had 6.5 hours per week of homemaker services, but Appellant had requested that homemaking services be stopped due to anxiety around her homemaker. Exhibit 4 at 1.
10. Appellant moved residences in April 2023.
11. Appellant testified that a stranger performing heavy chore tasks in her home would exacerbate her anxiety and PTSD.
12. Appellant's OT wrote that Appellant's inability to perform the unpacking task and the presence of unpacked boxes and clutter

has caused progressive neurological dysregulation. Due to symptoms related to her diagnoses of Autism, ADHD, and history of trauma, [Appellant] has neurologically heightened chemical and electrical responses to stimuli requiring significant structure for daily success. In this current, new, environment this structure has been unable to be created without a Professional Organizer. Attempts to address this during her occupational therapy services have yielded minimal overall effect compared to global need, due to the specialty role of a Professional Organizer.

Exhibit 10.

13. The OT wrote that Ms. Ehrlich's service "can assist with creating structure in the Bedroom and Office, facilitating effective access to functional objects and to promote a functional space for Activities of Daily Living and Instrumental Activities of Daily Living." *Id.*

14. Appellant's OT wrote that the heavy chore service approved by CCA would not satisfy Appellant's needs, as it would disrupt Appellant's learning process in facilitating the functional environment. Additionally, Appellant would have a lower trauma response through her pre-established relationship with Ms. Ehrlich. *Id.*
15. Ms. Ehrlich wrote that she has worked with Appellant over several years to assist her "with uncluttering, organizing, and maintenance of newly developed systems to help her with her ADL." Appellant's abilities are limited by her severe anxiety and PTSD. Ms. Ehrlich stated that working side by side with a known, trusted professional is "the fastest and most regulating way to provide effective disability accommodations." Exhibits 6 and 11.
16. Ms. Ehrlich also wrote that "As a Registered Nurse I specialize in mental health disorders that make attention and concentration so difficult, and help initiate decision making and facilitate situations where [Appellant] needs to take a break with her assistance animal." *Id.*
17. Ms. Ehrlich's fees are \$100/hour plus \$50/hour for travel time. Exhibit 11.

## Analysis and Conclusions of Law

MassHealth members younger than 65 years old, except those excluded under 130 CMR 508.004, must enroll in the Primary Care Clinician (PCC) Plan or a MassHealth-contracted MCO available for their coverage type. 130 CMR 450.117(A) and 130 CMR 508.002. MassHealth managed care options include an integrated care organization (ICO) for MassHealth Standard and CommonHealth members who also meet the requirements for eligibility set forth under 130 CMR 508.007. Members who participate in an ICO obtain all covered services through the ICO. 130 CMR 450.117(K).

A member may enroll in an ICO if he or she meets the following criteria:

(A) Eligibility.

(1) In order to be eligible to enroll in an integrated care organization (ICO), a MassHealth member must meet all of the following criteria, and may not be enrolled or concurrently participate in any of the programs or plans listed in 130 CMR 508.007(F):

- (a) be 21 through 64 years of age at the time of enrollment;
- (b) be eligible for MassHealth Standard as defined in 130 CMR 450.105(A): *MassHealth Standard* or MassHealth CommonHealth as defined in 130 CMR 450.105(E): *MassHealth CommonHealth*;
- (c) be enrolled in Medicare Parts A and B, be eligible for Medicare Part D, and have no other health insurance that meets the basic-benefit level as defined in 130 CMR 501.001: *Definition of Terms*;



and  
(d) live in a designated service area of an ICO.

130 CMR 508.007.

The ICO will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, the ICO is required to provide evidence of its coverage, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to specialty, behavioral-health, and long-term services and supports. 130 CMR 508.007(C). ICO members may appeal a determination made by an ICO to the Board of Hearings pursuant to 130 CMR 508.010.

CCA's One Care Plan is a MassHealth ICO. CCA's One Care Member Handbook, Exhibit 5, provides which services the plan covers. Per the handbook, CCA's One Care plan covers chore services as part of long term services and supports, though it does not identify organization services specifically. Exhibit 5 at 74. The Handbook's requirements regarding prior authorization of services includes reference to CCA's medical necessity guidelines.

According to CCA's medical necessity guidelines, a non-covered benefit is

[a] resource that is not covered by Medicare or Medicaid that CCA care teams may consider medically necessary. These are, normally, rare exceptions to the yearly CCA benefit plan for a specific member based on their unique health needs, clinical context or 'story.' Such exceptions can be shown or reasonably anticipated to show a clear clinical value to the individual member and to CCA's overall programming for all members.

CCA Medical Necessity Guideline (MNG) #100, Exhibit 4 at 37.

Non-covered benefits are subject to prior authorization. *Id.* CCA follows MNG #100 unless there is a more expansive and applicable National Coverage Determination, Local Coverage Determination, or state-specific medical necessity guideline. *Id.* at 37-38.

MNG #100 provides that a member may be eligible for a non-covered benefit if:

**Clinical Eligibility:** A member may be eligible for a non-covered benefit, which may be called a "benefit exception," when CCA is provided a clear determination of need and rationale for how this resource will improve a member's individualized care plan. A member may receive a specified resource after a careful evaluation, individualized risk assessment, and well documented rationale showing how the benefit may be both reasonable (1) and medically beneficial (2).

(1) Reasonable-- Of modest or moderate cost outweighed by other cost

savings or benefits

(2) Medically beneficial—Of reasonable likelihood to significantly improve a member's health and quality of life

*Id.* at 37. The following limitations and exclusions apply:

**LIMITATIONS/EXCLUSIONS:** A member is not eligible for a non-covered benefit if any of the following apply:

1. It is not considered to be medically necessary.
- 2. The anticipated outcome can be achieved through an alternate covered benefit.**
3. If a network provider cannot provide the non-covered benefit and CCA is unable to develop a letter of agreement (LOA) with a provider for the benefit
4. Clinical documentation that alternative approaches have been trialed and results of trials.
5. Clinical documentation (if relevant) as to why ordinary alternatives are less effective.
6. Individualized risk assessment shows what the risk may be of not providing this benefit to the member.
7. Anticipated outcome.
8. How anticipated outcome will be measured and evaluated.

*Id.* at 37-38 (emphasis added).

Here, the requested organizing services are not a covered benefit. Therefore, in order for CCA to approve the request, there must be clinical eligibility for the non-covered benefit and it must not fall under a limitation or exclusion. CCA denied the requested service because the anticipated outcome can be achieved through an alternate covered benefit, to wit, chore services. There was no dispute as to whether Appellant clinically needs assistance in her home, demonstrated by the approval of the heavy chore service and also homemaker services.

Appellant argued, and presented convincing evidence, that the approved heavy chore services would not replicate the service provided by Ms. Ehrlich. Appellant's OT and Ms. Ehrlich established that Appellant would not medically benefit from a heavy chore service to unpack her moving boxes, given that her medical conditions would be exacerbated by the presence of a stranger in her home. Appellant's OT established the medical need for Appellant to receive the organization services to allow her to perform ADLs and regulate herself in her home environment.

CCA was not prepared for hearing and disregarded the hearing officer's deadline for a record open response. CCA did not offer any evidence to rebut the medical basis for the request presented by Appellant's providers. CCA did not offer evidence that any in-network provider meets Appellant's

needs as identified by her providers. CCA also did not allege any other rationale for denying the request, such as the reasonableness of the cost.

Moreover, the evidence presented demonstrates why a one-time approval of the requested organization service meets the definition and spirit of a non-covered benefit as set forth in MNG #100. Appellant's circumstance is unique as she had recently moved residences. Appellant's providers indicated that Appellant would clinically benefit from the organization services so she may be regulated in her home and not have her medical conditions exacerbated by the stress and concern over having strangers in her home. Appellant's testimony was that the one-time approval will help her be able to maintain her environment with her other supports in place. The evidence presented shows that this approval would be rare exception to the yearly plan.

As Appellant has demonstrated that the medical benefit of the requested organization services could not be replicated by the heavy chore services approved by CCA, this appeal is approved.

## **Order for Respondent**

In lieu of the approved eight hours of heavy chore services, approve Appellant's request for eight hours of professional organizing services offered by Carol Ehrlich, RN, MBA at a rate of \$100 per hour. Ensure that a letter of agreement and/or other contractual requirements are met in order for Ms. Ehrlich to appropriately bill CCA for her services.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

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