

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2309963
Decision Date:	1/29/2024	Hearing Date:	11/6/2023
Hearing Officer:	Cynthia Kopka	Record Open to:	12/4/2023

Appearance for Appellant:
Pro se

Appearance for Respondent:
Cassandra Horne, Appeals and Grievances
Manager
Jeremiah Mancuso, Clinical RN Appeals and
Grievances Manager
Kaley Ann Emery, Appeals Supervisor
Nicole Ward



*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:	Approved in part	Issue:	Personal care attendant services
Decision Date:	1/29/2024	Hearing Date:	11/6/2023
Respondent's Rep.:	Cassandra Horne, Jeremiah Mancuso, Kaley Ann Emery, Nicole Ward	Appellant's Rep.:	Pro se
Hearing Location:	Tewksbury (remote)	Aid Pending:	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 October 6, 2023, Commonwealth Care Alliance (CCA), a MassHealth Senior Care Organization (SCO), denied Appellant's Level I appeal, partially approving Appellant's request for personal care attendant (PCA) service hours. Exhibit 1. Appellant filed this appeal in a timely manner on October 17, 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).

Action Taken by Respondent

CCA partially approved Appellant's request for PCA service hours.

Issue

The appeal issue is whether Appellant is eligible for more PCA service hours than approved by CCA.

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. Appellant appeared by phone and submitted a letter from his PCP. Exhibit 2. A summary of testimony and written materials follows. Appellant has been enrolled in CCA's SCO program since November 1, 2022. The request on appeal was for personal care attendant (PCA) services. On August 17, 2023, CCA reviewed Appellant's request for 27.5 day/evening hours of PCA services and issued a partial approval, reducing Appellant's hours to 15.25 day/evening hours weekly effective September 1, 2023. On September 8, 2023 Appellant appealed the partial approval. After review, on October 5, 2023, a medical director partially overturned the decision, approving 15.5 day/evening hours effective October 5, 2023. Appellant was notified of the change on October 6, 2023. Exhibit 1. Based on the filing of the Level 1 appeal, CCA determined that Appellant was not entitled to keep his prior level of benefits pending the outcome of the appeal.

Regarding the reduction of PCA hours, CCA noted that Appellant's most recent evaluation on August 7, 2023 showed functional improvement since the prior evaluation done on April 2, 2021 by Greater Springfield Senior Services. The previous level of services had been extended eight times due to difficulty with scheduling. Exhibit 4 at 1. Additionally, Appellant transferred from CCA's One Care program, an Integrated Care Organization (ICO) to CCA's SCO program. CCA wrote that "[m]embers in ICO can get PCA time for supervision, and members in the SCO program cannot." Exhibit 1 at 2. Based on the August 7, 2023 assessment, CCA made modifications to Appellant's request for assistance with mobility, bathing, dressing, toileting, and medication assistance.

In the area of mobility, Appellant previously received 338 minutes per week of assistance. CCA reduced the time to 42 minutes per week for transfers only. The time allowed was decreased because during the evaluation, Appellant was observed and reported to be independent. Appellant has a cane but was not using it at the evaluation while maintaining a steady gait. CCA approved time for allow intermediate assist with bed transfers. The evaluation showed that Appellant was able to manage long walks and stairs at a slow pace with cane and frequent breaks. In 2021, Appellant was evaluated as moderate assist for both mobility and transfers. The latest assessment demonstrated that Appellant is independent for mobility and requires minimal assist for transfers.

Appellant testified that on the day of the evaluation, he was having a good day. Now, Appellant has COPD and has difficulty getting up his three flights of stairs. His pulmonary doctor told Appellant that he would need supplemental oxygen. Appellant has difficulty getting around his house. Appellant's PCA assists Appellant moving around the house due to breathing issues and problems with his back and heel. At times Appellant needs help getting up. Appellant cannot independently get up and ambulate to the bathroom fast enough due to his shortness of breath. His PCA will sometimes assist him in ambulating to the bathroom by holding him under his arms. If the PCA is not present, Appellant uses a urinal bottle because he does not feel secure ambulating

to the bathroom alone.

In the area of bathing, Appellant was previously approved for 210 minutes per week (or 30 minutes per day). CCA modified the request and approved 35 minutes per week (5 minutes per day). The report indicated that Appellant only requires assistance transferring into and out of the tub occasionally. Appellant functionally requires minimal assistance, as he can wash himself independently and has a shower chair.

Appellant testified that he does not use his shower chair because it does not fit in his tub. The PCA runs the water and helps Appellant sit in the tub. It is not safe for Appellant to stand in the shower. Appellant is able to wash himself, but the PCA helps him get up. The PCA helps Appellant dry himself and ensures he does not fall. Appellant estimates that it takes 10 minutes for the PCA to get him into the tub and 10 minutes to help him out and dry him off. Appellant takes a tub bath every day. The assessment listed Appellant as requiring minimum assistance with bathing, as opposed to the prior year when he required maximum assistance. *Id.* at 176, 213.

In the area of dressing and undressing, Appellant previously had a maximum level of assist and was approved for 70 minutes for dressing (10 minutes daily) and 70 minutes for undressing (10 minutes daily). CCA modified the request and approved 21 minutes per week for dressing (3 minutes daily) and 21 minutes per week for undressing (3 minutes daily), having determined that Appellant's functional level was now at a minimal assist. *Id.* at 179. It was reported that Appellant only occasionally needs assistance for upper body dressing only. Appellant is able to manage buttons and zippers. Appellant's PCA reported that she assists with dressing when Appellant encounters difficulty. Appellant reported that he is independent with lower dressing and socks and shoes. Appellant requires assistance due to poor vision, poor endurance, and pain.

Appellant testified that his PCA helps him with his socks. Appellant can don his own underwear. The PCA assists Appellant with his upper clothes. Appellant sits to don his pants and his PCA holds them for him while he puts his pants on his legs. Appellant estimated that the task takes approximately 7-10 minutes.

In the area of toileting, CCA determined that Appellant is now independent with toileting during day/evening hours. *Id.* at 181. Appellant was observed transferring on and off the toilet with his durable medical equipment (DME). Appellant reported he can change his clothes independently for any infrequent occurrence of incontinence. Appellant can perform hygiene independently and can walk to the bathroom at night with a cane. A urinal was ordered to assist Appellant with nighttime toileting. The only assist Appellant reported was using a toilet riser and grab bars. Previously, Appellant had been approved for 3 minutes, 6 times per day, 7 days per week (or 126 minutes weekly) for minimum bladder assistance and 3 minutes, 1 time per day, 7 days per week (or 21 minutes weekly) for bowel assistance. This included time for physical assistance, clothing management, and hygiene. *Id.* at 217.

Appellant confirmed he can sit on the toilet riser himself, but sometimes needs assistance getting off the toilet from the PCA because of the risk of falling. If the PCA is not present, he uses a urinary bottle. Appellant has prostate problems for which he takes medication. At times during the day, Appellant may have to urinate 7 or 8 times without the PCA present, using the urinary bottle. Appellant is worried about running out of breath on his way to the bathroom. Regarding bowel care, Appellant testified that he goes in the morning, sits on the toilet, and waits for the PCA to help him get off the toilet. Appellant can clean himself but the PCA helps him get up and get back to the chair.

In the area of medication assistance, CCA initially denied the request but approved 7 minutes per week for reminders after the Level 1 appeal. After discussion at hearing, CCA ultimately approved 62 minutes per week for assistance with medication prefills and assistance. This was an increase over the prior assessment when Appellant had been approved for 31 minutes. Appellant was satisfied with this approval. CCA testified that this increase would be effective immediately.

CCA requested medical documentation from Appellant's pulmonary specialist regarding his shortness of breath to consider restoring time in other areas of care affected by Appellant's COPD. Appellant requested time to make that submission. The hearing record was held open through November 27, 2023 for Appellant to provide a letter of medical necessity establishing how Appellant's COPD and difficulty breathing affects his ability to perform ADLs. CCA had through December 4, 2023 to review and respond. Exhibit 6. On November 14, 2023, Appellant's physician wrote that Appellant has COPD and needs more than 15.5 hours for PCA assistance with ADLs because of increasing shortness of breath, weakness, and poor vision. Exhibit 7.

On January 19, 2024, CCA responded that the document submitted by Appellant was not sufficient to determine how the shortness of breath impacts his functional ability. CCA responded that it would schedule a new evaluation but it could not increase time discussed at hearing based on the new doctor's note. Exhibit 8.

Findings of Fact

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

1. Appellant has been enrolled in CCA's SCO program since November 1, 2022.
2. In 2021, Appellant received 27.5 day/evening hours of PCA services weekly. This was extended eight times due to difficulty scheduling a follow-up evaluation.
3. On August 17, 2023, CCA reviewed Appellant's request for 27.5 day/evening hours of PCA services and issued a partial approval, reducing Appellant's hours to 15.25 day/evening hours weekly effective September 1, 2023. Exhibit 4 at 29.

4. On September 8, 2023, Appellant appealed the partial approval (Level 1). *Id.* at 58.
5. On October 5, 2023, a medical director partially overturned the decision, approving 15.5 day/evening hours effective October 5, 2023. Appellant was notified of the change on October 6, 2023. Exhibit 1.
6. Appellant filed this appeal on October 17, 2023. Exhibit 2.
7. In the area of mobility, Appellant previously received 338 minutes per week of assistance for moderate assistance. CCA reduced the time to 42 minutes per week for minimal assist with transfers only.
8. In the area of bathing, Appellant was previously approved for 210 minutes per week (or 30 minutes per day) for maximum assistance. CCA modified the request and approved 35 minutes per week (5 minutes per day) for minimum assistance.
9. Appellant cannot use his shower chair and therefore must take a tub bath daily. Appellant requires assistance with transfers in and out of the tub and with drying.
10. In the area of dressing and undressing, Appellant was previously approved for 70 minutes for dressing (10 minutes daily) and 70 minutes for undressing (10 minutes daily) for maximum assistance. CCA modified the request and approved 21 minutes per week for dressing (3 minutes daily) and 21 minutes per week (3 minutes daily) for minimum assistance.
11. Appellant requires assistance with upper body clothes, socks, and pants.
12. In the area of toileting, CCA determined that Appellant is now independent with toileting during day/evening hours. Appellant required minimum assistance in the year prior and received 126 minutes per week.
13. Previously, Appellant had been approved for 3 minutes, 6 times per day, 7 days per week (or 126 minutes weekly) for minimum bladder assistance and 3 minutes, 1 time per day, 7 days per week (or 21 minutes weekly) for bowel assistance. This included time for physical assistance, clothing management, and hygiene. *Id.* at 217.
14. Appellant requires assistance from the PCA to transfer to and from the toilet due to his COPD.
15. In the area of medication assistance, CCA initially denied the request but approved 7 minutes per week for reminders after the Level 1 appeal. After discussion at hearing, CCA

ultimately approved 62 minutes per week for assistance with medication refills and assistance.

Analysis and Conclusions of Law

A senior care organization (SCO) is “a comprehensive network of medical, health care and social service providers that integrates all components of care, either directly or through subcontracts. SCOs will be responsible for providing enrollees with the full continuum of Medicare and MassHealth covered services.” Mass. Gen. Laws ch. 118E, § 9D(a). MassHealth members over the age of 65 may elect to enroll in a SCO to deliver the member’s primary care and authorize, arrange, integrate, and coordinate the provision of all covered services for the member. 130 CMR 508.001(C), 508.008(C), 450.117(A). Members whose services are administered by a SCO have notice and appeal rights as set forth in 130 CMR 508.011 and 130 CMR 610.032. An SCO has 30 days to resolve any internal appeals, and the member then has 120 days to request a fair hearing from the Board of Hearings. See 130 CMR 508.012; 130 CMR 610.015(B)(7).

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (2) The member’s disability is permanent or chronic in nature and impairs the member’s functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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, or 517.007.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) dressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel or bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM agency must assume the following.

- (1) When a member is living with family members, the family members will

provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

CCA Senior Care Options is a MassHealth SCO. CCA's Member Handbook, Exhibit 5, provides which services the plan covers, including home care services to assist with ADLs. Exhibit 5 at 73.

Here, it is undisputed that Appellant qualifies for PCA services. The issues in dispute that remain after hearing are CCA's modifications of mobility, bathing, dressing, and toileting. CCA agreed to restore and increase time for medication assistance (reflected in the order below).

For mobility, this appeal is denied. Appellant testified that his need for assistance with mobility occurs when he needs to use the toilet. CCA's time for task tool indicates mobility assistance under this category is for movement excluding to and from the bath and toilet. Exhibit 4 at 38. As such, Appellants needs for assistance with mobility are addressed in the toileting category below.

For bathing, this appeal is approved in part. Appellant offered credible testimony that he requires assistance with bathing in the form of a tub bath daily because the shower chair he received does not fit in his tub. Appellant requires assistance getting in and out of the bath but is able to wash himself. According to CCA's time for task guideline, an individual who needs minimal assistance with a tub bath, including set up, transfers in/out, and toweling would qualify for 15 minutes. *Id.* at 41. Accordingly, this appeal is approved to allow Appellant 15 minutes daily, or 105 minutes weekly, for the bathing task.

For dressing, this appeal is approved in part. Appellant requires minimal assistance with both dressing and undressing. CCA appears to have only approved half of the average amount of time for minimal assist (7 minutes) because Appellant can dress his lower half independently. *Id.* at 43. However, based on Appellant's testimony, the PCA also assists him with his socks and pants. Accordingly, this appeal is approved in part to allow 5 minutes for dressing and 5 minutes for undressing daily, or 35 minutes weekly for dressing and 35 minutes weekly for undressing .

For toileting, this appeal is approved in part. Appellant testified that his shortness of breath limits his ability to ambulate to the toilet and that when his PCA is present, the PCA provides hands-on assistance to help him to the toilet. The PCA also assists with transfers off of the toilet. There appears to be some functional improvement with Appellant's ability to perform toilet hygiene per

his testimony. Based on Appellant's testimony, the time for task guidelines, and there having been functional improvement between the 2021 assessment and the 2023 assessment, this appeal is approved in part to allow 2 minutes, 7 times per day, 7 days per week for bladder and bowel care, which is 14 minutes daily and 98 minutes weekly.

Order for Respondent

Restore PCA services for the following tasks, effective September 1, 2023:

- Bathing: 105 minutes weekly;
- Dressing/undressing: 70 minutes weekly;
- Toileting: 98 minutes weekly; and
- Medication assistance: 62 minutes weekly (if not already implemented).

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

General Counsel's Office –Sharon Boyle