

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2312758
Decision Date:	3/7/2024	Hearing Date:	1/19/2024
Hearing Officer:	Cynthia Kopka	Record Open to:	2/2/2024

Appearance for Appellant:



Appearance for Respondent:

Cassandra Horne, Appeals and Grievances  
Manager  
Jeremiah Mancuso, Clinical RN Appeals and  
Grievances Manager  
Amy Stebbins, RN, Utilization Manager



*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>	Denied	<b>Issue:</b>	MCO – prior authorization, PCA
<b>Decision Date:</b>	3/7/2024	<b>Hearing Date:</b>	1/19/2024
<b>MassHealth's Rep.:</b>	Cassandra Horne, Jeremiah Mancuso, Amy Stebbins	<b>Appellant's Rep.:</b>	Pro se, with daughter
<b>Hearing Location:</b>	Quincy (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

By notice dated November 24, 2023, Commonwealth Care Alliance (CCA), a MassHealth MassHealth Integrated Care Organization (ICO), denied Appellant's Level I appeal, denying Appellant's request for personal care attendant (PCA) service hours. Exhibit 1. Appellant filed this appeal in a timely manner on December 8, 2023 and was eligible to retain her services pending the outcome of the appeal. Exhibit 2. 130 CMR 610.015(B) and 610.036. Denial of assistance is a valid basis for appeal. 130 CMR 508.010, 130 CMR 610.032(B).

### Action Taken by Respondent

CCA denied Appellant's request for PCA services.

### Issue

The appeal issue is whether Appellant is eligible for PCA services.

### Summary of Evidence

CCA's representatives, including an appeals and grievances supervisor, nurse review manager, and utilization manager, appeared by phone and provided written materials in support. Exhibits 4 and 5. Appellant appeared at hearing with her daughter and submitted documents in support. Exhibit 2. A summary of testimony and written materials follows. Appellant has been enrolled in CCA's OneCare program since January 1, 2023 and previously from 2017 to 2019. At issue in this appeal is Appellant's request for 10.5 hours of PCA services as requested by Appellant's Personal Care Management Agency (PCMA), Tempus.

Upon re-enrolling in CCA's OneCare program, Appellant requested and was granted continuity of care of services in place for 90 days. CCA testified that Appellant had in place both adult foster care (AFC) services and PCA services. CCA granted approval of both services for 90 days and granted an extension through April 2023. In May 2023, CCA received a prior authorization request for AFC Level 1 services, which was approved.

On or about September 25, 2023, Appellant's PCMA Tempus performed a PCA evaluation and submitted it to CCA for review. Exhibit 4 at 65-86. On or about October 17, 2023, CCA reviewed the request and determined that Appellant was receiving AFC Level 1 services. The note from the medical director states Appellant "is currently approved for 10 respite PCA hours and for Adult Foster Care level 1 (formerly AFC level 2/Beyond Independent Living AFC agency confirmed that member is AFC Level 1)." Exhibit 4 at 6. Another note dated October 12, 2023 indicated that Appellant had transferred from Level 2 to Level 1 AFC services. *Id.* at 8.

CCA's Medical Necessity Guidelines for PCA services provide that up to "10 hours per week of PCA may be authorized for members receiving Adult Foster Care (AFC) level 2 for the purpose of providing respite to the AFC Caregiver. (Thus, the AFC Caregiver(s) may not be the PCA.)" *Id.* at 37. CCA does not approve PCA hours for members receiving AFC Level 1 services, nor does CCA approve the AFC caregiver to also be the PCA. Additionally, MassHealth's PCA regulations do not allow for approval of PCA services. 130 CMR 422.412(A) and (E). The utilization manager for CCA's PCA team testified that several calls were made to Appellant's AFC provider Beyond Independent Living, who confirmed that Appellant was receiving Level 1 services. Accordingly, CCA denied Appellant's request for PCA. Exhibit 1.

Appellant's daughter testified that she is Appellant's AFC caregiver and PCA. Appellant started on Tempus' payroll on January 15, 2023 and have had no issues. Appellant's services have been in place for the past year. On September 25, 2023, the nurse conducted the reevaluation and Appellant was told that the PCA services were denied in October due to a change in the level of care. Appellant's daughter testified that there had not been a change in Appellant's health or her functional ability. Appellant was told she went from Level 2 to Level 1. Appellant and her daughter knew nothing about a level change. Appellant's daughter's paycheck had never changed and she was always paid for Level 1 services. Appellant's daughter moved in with Appellant about three years prior to help and was certified in care as an AFC provider. A nurse and social worker check in

with them every month, and there was no indication from them that Appellant's level had changed. Appellant's daughter wrote a letter in support arguing that there was no basis for Appellant's change in AFC level. Appellant's daughter noted errors made by CCA. Appellant and her daughter expressed confusion as to why the PCA request was submitted for respite care. Appellant is not receiving respite services.

The hearing record was held open through February 2, 2024 for both Appellant and CCA to submit documentation regarding Appellant's AFC level of care. Exhibit 6. Appellant submitted documents including CCA's and MassHealth's approvals for AFC and PCA services. Exhibit 7. The documents show that Appellant was approved for Level 1 AFC services by both MassHealth and CCA. There was no approval for Level 2 AFC services. *Id.* CCA did not provide any documents during the record open period.

## Findings of Fact

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

1. Appellant has been enrolled in CCA's OneCare program since January 1, 2023 and previously from 2017 to 2019.
2. On September 25, 2023, Appellant's PCMA Tempus submitted a request for 10.5 hours of PCA services. Exhibit 4 at 65-86.
3. On October 17, 2023, CCA denied the request, writing that Appellant is not eligible because she was receiving AFC Level 1 services. CCA wrote that Appellant's PCA services would end January 1, 2024. Exhibit 1 at 4.
4. The denial notice states that "Respite care can be approved if you are receiving Adult Foster Care (AFC) Level 2. At the time you were approved you had AFC Level 2. You now have AFC Level 1. PCA is not covered for respite with AFC Level 1." *Id.*
5. On October 27, 2023, Appellant requested a Level I appeal of the denial. Exhibit 4 at 42.
6. On November 24, 2022, CCA denied the Level I appeal, noting that Appellant never had AFC Level 2 services. Exhibit 1 at 1.
7. Appellant filed an appeal on December 7, 2024. Exhibit 2.

## 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, pertinent pages included as Exhibit 5, provides which services the plan covers, including AFC and PCA services. Exhibit 5 at 60, 95. Prior authorization is required for PCA services. *Id.* at 95.

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 does not cover "PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care." 130 CMR 422.412(E).

Adult Foster Care services are covered for members who have "a medical or mental condition that requires daily hands-on (physical) assistance or cueing and supervision throughout the entire activity in order for the member to successfully complete at least one" ADL. 130 CMR 408.416(B). Through the AFC program, care is provided "by a qualified AFC caregiver, as described in 130 CMR 408.434, who lives in the residence and who is selected, supervised, and paid by the AFC provider." 130 CMR 408.415(A). A member is eligible for Level 1 AFC services if the member "requires hands-on (physical) assistance with one or two of the activities described in 130 CMR 408.416 or requires cueing and supervision throughout one or more of the activities listed in 130 CMR 408.416 in order for the member to complete the activity." 130 CMR 408.419(D)(1). A member is eligible for Level 2 AFC services if the member requires

- (a) hands-on (physical) assistance with at least three of the activities described in 130 CMR 408.416; or
- (b) hands-on (physical) assistance with at least two of the activities described in 130 CMR 408.416 and management of behaviors that

require frequent caregiver intervention as described in 130 CMR 408.419(D)(2)(b)1. through 5.:

1. wandering: moving with no rational purpose, seemingly oblivious to needs or safety;
2. verbally abusive behavioral symptoms: threatening, screaming, or cursing at others;
3. physically abusive behavioral symptoms: hitting, shoving, or scratching;
4. socially inappropriate or disruptive behavioral symptoms: disruptive sounds, noisiness, screaming, self-abusive acts, disrobing in public, smearing or throwing food or feces, rummaging, repetitive behavior, or causing general disruption; or
5. resisting care.

130 CMR 408.419(D)(2).

CCA's Medical Necessity Guideline (MNG) #80 sets forth guidelines for determining medical necessity for the PCA program. Exhibit 4 at 34-41. Regarding PCA services for a member approved for AFC, MNG #80 states that for respite care, "[u]p to **10 hours per week of PCA** may be authorized for members receiving **Adult Foster Care (AFC) level 2** for the purpose of providing respite to the AFC Caregiver. (**Thus, the AFC Caregiver(s) may not be the PCA.**)" *Id.* at 37 (emphasis added).

Here, the undisputed facts show that Appellant does not qualify to receive the PCA services requested on her behalf according to CCA's MNG #80. One, Appellant requested greater than 10 hours per week. Two, Appellant is only receiving Level 1 AFC services. Three, Appellant's AFC caregiver is her PCA, and therefore these services are not respite for the caregiver but rather a duplication of Appellant's AFC services. It appears that CCA erred in authorizing these services in the first place, not that there was a change in Appellant's level of care. Appellant has not demonstrated that CCA's decision to deny PCA services based on the facts was made in error. Accordingly, this appeal is denied.

## Order for CCA

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.

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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]