

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2401632
Decision Date:	04/18/2024	Hearing Date:	03/15/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearances for Respondent,
Commonwealth Care Alliance (CCA):

Via telephone:

Cassandra Horne, Appeals & Grievances Mgr.

Jeremiah Mancuso, Clinical RN Appeals &
Grievances Mgr.

Kaley Ann Emery, Appeals Supervisor

Elaine Cahill, OT Reviewer for PCA Program



*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	Issue:	Prior Authorization – PCA
Decision Date:	04/18/2024	Hearing Date:	03/15/2024
MassHealth's Reps.:	Cassandra Horne, et al	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South Remote	Aid Pending:	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 Denial of Level 1 Appeal dated January 20, 2024, Commonwealth Care Alliance (“CCA”) denied the appellant’s internal appeal regarding personal care attendant (PCA) services because it determined the requested level of services were not medically necessary. Exhibit 1. The appellant filed this appeal in a timely manner on January 30, 2024. Exhibit 2; 130 CMR 610.015(B). An integrated care organization’s decision to deny or provide limited authorization of a requested service is grounds for appeal. 130 CMR 610.032(B).

Action Taken by Commonwealth Care Alliance

CCA reduced the number of PCA hours it authorized for the appellant from the requested 84.5 hours per week down to 79.5 hours per week.

Issue

The appeal issue is whether CCA was correct, pursuant to 130 CMR 422.000 and 450.204, in determining that the appellant required fewer hours of PCA assistance than she had requested.

Summary of Evidence

CCA's representatives and the appellant's representative (her brother and legal guardian) appeared at hearing via telephone. CCA testified as follows: the appellant is an adult under the age of 65 and has been enrolled in CCA One Care, an integrated care organization (ICO), since November 1, 2013. Her primary diagnoses include [REDACTED], seizures, and quadriplegia. She is nonverbal, experiences contractures and stiffness, has limited range of motion, and requires a two-person assist with a Hoyer lift for transfers. Her previous prior authorization, from October 1, 2022 through September 30, 2023, approved her for 79.75 hours per week of PCA assistance, based on an August 16, 2022 re-evaluation. Most recently, the appellant was re-evaluated on October 14, 2023 and her Personal Care Management (PCM) agency, Boston Center for Independent Living, requested 84.5 hours per week of PCA services. CCA reviewers compared the August 2022 re-evaluation to the October 2023 re-evaluation and determined that there was no rationale given by the nurse assessor who conducted the October 2023 evaluation to support the need for an increase in PCA hours. Thus, on November 7, 2023, CCA denied the appellant's request and approved her for 79.5 hours per week of PCA services. After an internal Level 1 appeal, CCA notified the appellant on January 20, 2024 that it approved her for 80.25 PCA hours per week effective February 3, 2024 through December 31, 2024. This is the notice under appeal. The appellant is currently authorized for 84.5 PCA hours through aid pending during the appeal process.

CCA's clinical nurse appeals and grievances manager testified that the tasks of mobility, grooming, and housekeeping were modified. He acknowledged that the evaluation was done on October 14, 2023, so the appellant's condition may have changed since then.

The appellant's brother testified that their family experienced a fire in their home on [REDACTED]. They lost their father, and the appellant has been hospitalized since then. The plan is for her to return home in a few days.

Mobility

In 2022, the appellant received 560 minutes per week for assistance with mobility, which includes mobility (moving from room to room within her home), transfers (transferring in and out of chairs, beds, etc.), and repositioning. In 2023, the appellant requested 728 minutes per week. CCA stated that the assessor did not document a significant change or decline in the appellant to justify an increase in time. The appellant remains totally dependent for care. At the time of the review, there

had been no hospitalizations or sign of decline to warrant the increase.

CCA stated that for mobility, the appellant requested 5 minutes, 10 times per day, 7 days per week (350 minutes per week). Last year, she was approved for 5 minutes, 4 times per day, 7 days per week (140 minutes per week). Because there was no documented change, CCA did not approve the increase in time for mobility. For transfers, the appellant requested 5 minutes, 6 times per day, 7 days per week (210 minutes per week). Last year, she was approved for 5 minutes, 8 times per day, 7 days per week (280 minutes per week). The appellant remains a two-person physical assist with transfers. CCA approved her for the 280 minutes that she had last year because there have been no documented changes. For repositioning, the appellant requested 3 minutes, 8 times per day, 7 days per week (168 minutes per week). Last year, she was approved for 5 minutes, 4 times per day, 7 days per week (140 minutes per week). Because there was no documented change, CCA did not approve the increase in time for repositioning.

The appellant's brother testified that the appellant has become heavier and less mobile every year, despite their best efforts with careful nutrition. The evaluations are challenging because every year, the PCM sends a different reviewer to complete it. But the appellant's ability to move decreases every year, resulting in more appointments at [REDACTED] each year. For example, in 2018, he could move the appellant by himself. Now it always requires two people. She is heavier, slower, and less flexible. The number of times she is moved from room to room is more than ten times per day. She is part of the household and is in constant motion throughout the day. She goes from her bed, to the table for breakfast, then to the bathroom, then to the living room where she will sit for a bit followed by some exercises, then to the kitchen for lunch, then to the bathroom, then to the deck to recline, then to the living room, back to the kitchen for dinner, then to the bathroom, and then back to her bedroom. As to repositioning, she is stiffer now and slides down in her chair. She needs to be re-positioned and pulled up in her chair more often than in past years, easily at least eight times per day.

Grooming

CCA testified that for grooming, the appellant requested 35 minutes, 1 time per day, 7 days per week (or 245 minutes per week). The evaluation noted that this includes time for oral care, brushing hair, applying lotion to the body, and deodorant. According to the time-for-task guidelines for the MassHealth PCA Program, the maximum time for someone that is totally dependent is 25 minutes per day for all grooming tasks. In the initial review, CCA reduced the time per day to 20 minutes; however, in the Level 1 appeal, the reviewer increased the time to 25 minutes per day. CCA stated that the PCM agency did not include a grooming sheet in the 2022 evaluation, so they were not able to see what was requested and approved for grooming in last year's prior authorization.

The appellant's brother testified that the appellant was diagnosed with [REDACTED] at age two, which affects her central nervous system. She cannot talk, walk, or brush her teeth. A lot of

these tasks are getting more complicated as she ages, despite being very careful to manage her weight and work on her mobility. She also occasionally has seizures and needs more help when those happen. She needs two people to do most of these grooming tasks. For example, when brushing her teeth, one person holds her hands to keep them out of the way and the other person does the brushing. Brushing her teeth is very difficult and she fights it. In general, she can be resistive to care. Clipping her fingernails and toenails is a major task that takes a long time. These grooming tasks combined definitely take more than 25 minutes per day.

CCA responded that the appellant was also approved for 20 minutes per day as needed for special needs, which included time for skin care. The request indicates the 20 minutes is for “PCA assist PM wash, including washing face, peri area, skin care, and dressing into pajamas.”

Housekeeping

CCA testified that the appellant requested 60 minutes per week for housekeeping. In 2022, she received 45 minutes per week for housekeeping. At the time the evaluation was submitted, there was no documentation that her living situation had changed. She was living with her legal guardian who is responsible for instrumental activities of daily living, including housekeeping. The 2023 evaluation did not include any justification for the increase in time, which is why CCA approved 45 minutes per week for housekeeping.

The appellant’s brother testified that she lives with him. Prior to the house fire, she lived with both him and their father. The PCAs help with her bedding, vacuuming her space, and cleaning her bathroom. She has her own bathroom. Every year, her needs become greater and more challenging to handle. She soils herself which makes a mess and creates more laundry as a result. When she has a seizure, which is not very often, she will vomit which requires additional cleaning. She is messier than a person without her medical conditions. Her needs are very specific, and she requires more and more assistance every year as she ages.

CCA noted that the appellant is approved for 90 minutes per week for laundry. Additionally, CCA does not have any records on the appellant’s most recent hospitalization. She can request an adjustment if needed and provide supporting documentation.

Findings of Fact

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

1. The appellant is under the age of 65 and has been enrolled in CCA’s One Care, an ICO, since November 1, 2013 (Testimony and Exhibit 5).
2. The appellant’s primary diagnoses include [REDACTED], seizures, and quadriplegia. She is

nonverbal, experiences contractures and stiffness, has limited range of motion, and requires a two-person assist with Hoyer lift for transfers. (Testimony and Exhibit 5).

3. The appellant's PCM agency evaluated the appellant on October 14, 2023 and requested 84.5 hours per week of PCA services (Testimony and Exhibit 5).
4. On November 7, 2023, CCA initially denied the appellant's request and approved her for 79.5 hours per week of PCA services (Testimony and Exhibit 5).
5. On January 20, 2024, after an internal Level 1 appeal, CCA informed the appellant that it approved her for 80.25 PCA hours per week, effective February 3, 2024 through December 31, 2024 (Testimony and Exhibit 5).
6. On January 30, 2024, the appellant timely appealed the Level 1 denial (Exhibit 2).
7. Previously, the appellant was approved for 79.75 hours per week of PCA assistance from October 1, 2022 through September 30, 2023, based on an August 16, 2022 evaluation (Testimony and Exhibit 5).
8. CCA compared the October 2023 evaluation to the August 2022 evaluation and determined there was no rationale in the October 2023 evaluation to support the increase in PCA hours (Testimony and Exhibit 5).
9. The appellant requested 728 minutes per week for PCA assistance with mobility, transfers, and repositioning. CCA approved her for 560 minutes per week, which was the same amount of time she had last year. (Testimony and Exhibit 5).
10. Despite their best efforts with nutrition, the appellant has become heavier every year. As she gets older, each year she is less mobile, less flexible, stiffer, and more difficult to move around, transfer, and reposition. (Testimony).
11. The appellant requested 35 minutes per day (245 minutes per week) for grooming. CCA initially approved her for 20 minutes per day, but after the internal appeal, increased the time to 25 minutes per day, the maximum amount of time typically given to someone who is totally dependent in accordance with the time-for-task guidelines. (Testimony and Exhibit 5).
12. The grooming tasks include oral care, brushing hair, applying lotion to the body, deodorant, and clipping fingernails and toenails. Most of these tasks require two people to complete. (Testimony and Exhibit 5).
13. The appellant requested 60 minutes per week for housekeeping. CCA approved the appellant for 45 minutes per week, which was the same amount of time she had last year. (Testimony

and Exhibit 5).

14. The appellant has her own separate bathroom. The PCAs help with her bedding, vacuuming her space, and cleaning her bathroom. Her needs increase every year and she is messier than a person without her medical conditions. (Testimony).
15. The appellant has been receiving 84.5 PCA hours per week through aid pending during the appeal process (Testimony).

Analysis and Conclusions of Law

As a MassHealth ICO, Commonwealth Care Alliance One Care

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)).

CCA is “responsible for providing enrolled members with the full continuum of Medicare- and MassHealth covered services.” (130 CMR 450.105(A)(7); 130 CMR 450.105(E)(6)). Those services include PCA services, which are governed by the regulations at 130 CMR 420.000. (See 130 CMR 450.105). As an ICO, CCA can provide more to members than MassHealth allows, but not less. Whenever an ICO makes a coverage decision, it must provide notice to the affected member. 130 CMR 508.011. An ICO 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).

MassHealth is required to cover all services and treatments that are “medically necessary”:

(A) A service is “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, or 517.007.

130 CMR 450.204(A).

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home.

ADLs include:

- (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 basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: 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 and bladder needs.

130 CMR 422.410(A).

IADLs include:

- (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 personal care services; and
- (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

130 CMR 422.410(B).

MassHealth **does not cover** any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) 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;
- (F) **services provided by family members, as defined in 130 CMR 422.402;** or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

Regarding mobility, the appeal is approved in full for the requested 728 minutes per week. Through his testimony, the appellant’s brother has demonstrated that the hands-on assistance with mobility, transfers, and repositioning takes longer than the time approved. The appellant is heavier and less mobile than last year. She is less flexible and it is more difficult to move her. Additionally, because of her increased stiffness, she slides down in her chair and requires more frequent repositioning. For these reasons, the appellant has shown that additional PCA time is medically necessary and she is approved for 728 minutes per week of assistance with mobility, as

requested.

Regarding grooming, the appeal is approved in full for the requested 35 minutes per day (245 minutes per week). Through his testimony, the appellant's brother has demonstrated that the hands-on assistance the appellant needs with grooming is longer than the 25 minutes approved by CCA. The appellant requires two people to assist with most of these tasks, for which she is totally dependent. In addition to oral care, brushing hair, applying lotion, and deodorant, the appellant also requires time for clipping fingernails and toenails, which is very time consuming. While CCA pointed out that the appellant also receives 20 minutes per day for other "special needs," according to the request, that time is for PM wash, including washing face, peri area, skin care, and dressing into pajamas, and is separate from the grooming tasks. For these reasons, the appellant has shown that additional PCA time is medically necessary, and she is approved for 35 minutes per day (or 245 minutes per week) for grooming as requested.

Regarding housekeeping, the appeal is approved for 60 minutes per week as requested. The appellant has demonstrated that the PCA time spent on housekeeping takes longer than the 45 minutes approved by CCA. When someone is living with a family member or legal guardian, MassHealth regulations require family members to provide assistance with most IADLs, including housekeeping. (130 CMR 422.410(C)). Due to the appellant's various medical conditions, however, she is messy and her space (including her own, separate bathroom), must be cleaned more than an average person without her needs. MassHealth considers the individual circumstances in determining the number of hours of PCA services. Here, the appellant's medical conditions result in the need for housekeeping assistance in excess of the routine housekeeping assistance that would be expected for regular household maintenance. In light of the appellant's increasing needs, it is not unreasonable that the PCA would spend less than 9 minutes per day on housekeeping, in addition to the housekeeping already provided by the appellant's responsible family member. For these reasons, the appellant is approved for 60 minutes per week for PCA assistance with housekeeping, as requested.

Order for Commonwealth Care Alliance

Approve the appellant for PCA assistance in accordance with this decision: 728 minutes per week for mobility; 245 minutes per week for grooming; and 60 minutes per week for housekeeping, effective as of the date of this decision and for the remainder of the prior authorization period.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

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

cc: [REDACTED]