

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2403295
Decision Date:	9/4/2024	Hearing Date:	07/16/2024
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:



Appearances for Commonwealth Care Alliance:

Cassandra Horne, Appeals & Grievances Manager

Jeremiah Mancuso, Clinical R.N. Appeals & 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

Appeal Decision:	Denied	Issue:	Managed Care Organization—Denial of Internal Appeal; Prior Authorization; Personal Care Attendance (PCA) Services
Decision Date:	9/4/2024	Hearing Date:	07/16/2024
CCA Reps.:	Cassandra Horne; Jeremiah Mancuso; Kaley Ann Emery	Appellant's Rep.:	Son
Hearing Location:	Telephonic	Aid Pending:	No

Authority

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

The appellant is over the age of 65 and has enrolled in the Commonwealth Care Alliance Senior Care Organization (SCO) through MassHealth.

Jurisdiction

Through a notice dated March 2, 2024, Commonwealth Care Alliance (CCA), a MassHealth Senior Care Organization (SCO) and MassHealth's agent, denied the Appellant's level one appeal of a request to increase the hours of a prior authorization request for personal care attendant (PCA) services. Exhibit 1.¹ The Appellant filed this external appeal with the Board of Hearings in a timely manner on March 19, 2024. See 130 CMR 610.015 and Exhibit 2. Denial of a level one internal

¹ A Senior Care Organization is a MassHealth managed care provider and is open to MassHealth members who are 65 years of age or older and otherwise eligible for enrollment pursuant to 130 CMR 508.008(A).

appeal by a managed care organization is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032(B).

Action Taken by Commonwealth Care Alliance

CCA denied the Appellant's request for additional PCA service hours.

Issue

Whether CCA was acting within its discretion in its decision to deny the Appellant's request to increase their allotted PCA service hours.

Summary of Evidence

The appellant's authorized representative/son and the hearing officer appeared telephonically and the CCA representatives participated virtually. The appellant's representative verified the appellant's identity. The parties' testimony and record evidence are summarized as follows:

The appellant is an adult over the age of 65. The Appellant's medical history includes incontinence of bladder and bowel, sciatica, neuropathic pain of both legs, acute lumbar radiculopathy, macular degeneration, arthritis, unsteady gait, Alzheimer's Disease, dementia, and chronic pain. Testimony, Exhibit 8. The appellant resides with her son, in his home. Her son and her granddaughter serve as her primary caregivers. Testimony.

Ms. Horne began CCA's testimony. On August 1, 2023, the appellant joined the CCA SCO program with PCA services in place, receiving a total of 70 hours a week (56 day hours, and 14 night hours). Exhibit 8. On October 12, 2023, the appellant had her initial CCA SCO PCA Evaluation, was assessed for PCA services and based on the evaluation, it was recommended that the appellant's hours be increased to 70.25 hours/week for the time period 10/30/2023-10/31/2024. Testimony and Exhibit 8. On October 13, 2023, the appellant's niece reported that this is not enough time, and she feels the appellant is "24-hour care." Exhibit 8. The CCA records indicate that the appellant's family was given instructions on how to appeal, but they did not appeal at that time. Exhibit 8. On January 11, 2024, the CCA Utilization Management (UM) department processed a request from appellant's son for a re-evaluation for increased in PCA time. This request was denied, via notice to the appellant dated March 2, 2024, and the result is this appeal. Exhibit 8.

CCA testimony and notes indicate the results of the internal CCA UM department review:

You are receiving 70.25 total hours per week. An increase was requested. An assessment of your needs was done on

October 12, 2023. Your status has not changed. You have not had a decline in your functional abilities. You have not been hospitalized or used the emergency department. You live with your son. Your son is your Personal Care Attendant (PCA). There is no evidence that you need more Personal Care Attendant (PCA) hours. PCA is not provided for supervision. PCA Service, 70.25 total hours per week, is enough to meet your needs. For these reasons, increased Personal Care Attendant (PCA) Service was denied.²

Exhibit 8 at 2.

Mr. Mancuso, testifying on behalf of MassHealth/CCA, reviewed the CCA case notes and summarized the evaluations that the appellant had undergone in the past year. The appellant has not been hospitalized in the past 6-12 months, has not been to the emergency department at a hospital in the past 6-12 months, and the in-person evaluations of the appellant conducted in October 2023 and January 2024 revealed no changes in the appellant's condition or status that would require additional PCA services for the appellant. Testimony, Exhibit 8. It is CCA's position that the request for an increase in PCA services should be denied because there "does not appear to be a change in the member's status." Furthermore, CCA does not believe the appellant's request for additional services meets the criteria for medical necessity, given there is insufficient evidence that the requested service meets the "reasonable and necessary" standard for medical necessity outlined in CCA MNG 045 Medical Necessity. Exhibit 8 at 13. CCA emphasized that "PCA program/services are not provided for supervision³," but rather for hands-on care, and tasks performed by the PCA for the appellant. Testimony, Exhibit 8 at 13.

The appellant's authorized representative-son testified that his mother needs 24 hour per day care. She needs constant supervision. CCA responded that program cannot provide PCA time for cueing, supervision or preventative needs. The appellant-son is very stressed by the situation in

² The CCA records indicate that the appellant was first evaluated for PCA services on 12/13/2021 – she was awarded 56 daytime hours and 14 nighttime hours per week. CCA then evaluated the appellant for PCA services on 10/12/23, and determined that the appellant should receive 56 daytime hours, and 14.25 nighttime hours, per week. Exhibit 8 at 2.

³ Medical Necessity Guideline # 80 for Personal Care Attendant (Consumer-Directed). SCO Members: 1. If the member meets the 2 ADL requirement, the member may receive assistance with the following IADLs: a. Household services – physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping. b. Meal Preparation and clean-up - physically assisting to prepare meals. c. Transportation - accompanying to medical providers. d. Special needs - assisting with care and maintenance of wheelchairs and adaptive devices; completing paperwork required for receiving PCA services; special needs that are approved as being instrumental to the health care of the member.

his home with his mother, and he wants to be able to work more outside of the home to pay his bills, and requires more PCA hours for that. Testimony. He stated that it takes 2.5 to 3 hours for each toileting episode to complete all tasks, including assisting with hygiene and dressing his mother, as frequently urine and feces gets “everywhere,” and she cannot assist in the process in any way. Testimony. CCA’s position is that the appellant is already provided with 2.5 hours per day for toileting, and an hour and 40 minutes for overnight toileting; that 2.5 hours to 3 hours per toileting episode is significantly outside of the standard of care; and that the PCA program does not pay for time that is supervisory, cueing or preventative.

The appellant-son did not provide any new medical records or information about the appellant prior to the hearing being conducted on July 16, 2024, nor during the hearing. However, he did submit 16 pages of medical records on August 16, 2024, a full month after the hearing was conducted. I am unable to consider this information, as there was no request by the appellant for a record-open period following the hearing to submit additional material to be considered for this decision.

Findings of Fact

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

1. The appellant is an adult over the age of 65. Exhibit 6.
2. The appellant’s medical history includes incontinence of bladder and bowel, sciatica, neuropathic pain of both legs, acute lumbar radiculopathy, macular degeneration, arthritis, unsteady gait, Alzheimer’s Disease, dementia, and chronic pain. Testimony and Exhibit 8.
3. In August, 2023, the appellant enrolled with CCA for PCA services and was authorized for 56 day and 14 night hours weekly, 70 total hours. Testimony, Exhibit 8.
4. On October 12, 2023, the appellant was re-evaluated for PCA services and was awarded 70 day hours and 14.25 night hours weekly, or 70.25 total hours per week, for the period October 30, 2023 through October 31, 2024. Testimony, Exhibit 8.
5. The CCA PCA program does not provide any services for cueing, supervision, coaching or preventative needs to its members.

Analysis and Conclusions of Law

Pursuant to regulation 130 CMR 508.001: *MassHealth Member Participation in Managed Care*:

(C) Senior Care Organizations (SCO). MassHealth members who are 65 years of age or older may enroll in a SCO pursuant to 130 CMR 508.008(A).

Next, pursuant to MassHealth regulation 130 CMR 508.008(C):

(C) Obtaining Services When Enrolled in a SCO. When a member chooses to enroll in a senior care organization (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. Upon enrollment, each SCO is required to provide evidence of its coverage, including a complete list of participating providers, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to covered services such as specialty, behavioral health, and long-term-care services.

130 CMR 508.008(C).

MassHealth regulation 130 CMR 508.010: *Right to a Fair Hearing*, states as follows:

Members are entitled to a fair hearing under 130 CMR 610.000: MassHealth: Fair Hearing Rules to appeal:

(A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;

(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's disenrollment of a member under 130 CMR 508.003(D)(1), (D)(2)(a), or (D)(2)(b), or discharge of a member from a SCO under 130 CMR 508.008(E); or

(D) the MassHealth agency's determination that the requirements for a member transfer under 130 CMR 508.003(C)(3) have not been met.

140 CMR 508.010 (emphasis added).

As MassHealth's agent, CCA is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth SCOs, above, CCA is empowered to authorize, arrange, integrate, and coordinate the provision of all covered services for the Appellant.

MassHealth regulations about PCA services are found at 130 CMR 422.000 *et seq.* Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living and instrumental activities of daily living as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when:

- (1) they are prescribed by a physician;
- (2) the member's disability is permanent or chronic in nature;
- (3) the member requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility including transfers;
 - (b) medications;
 - (c) bathing or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting; and
- (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

130 CMR 422.403(C).

Regulation 130 CMR 422.410 describes the 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. and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing, and undressing, passive range-of-motion exercises, eating, and toileting

(including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

(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

130 CMR 422.410(A) and (B).

Pursuant to 130 CMR 450.204(A), MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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).

Next, pursuant to 130 CMR 422.412: *Noncovered Services*:

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; or
- (H) PCA services provided to a member without the use of EVV as requires by the MassHealth agency.

130 CMR 422.412.

The Appellant has the burden “to demonstrate the invalidity of the administrative determination.” Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. *See also*, Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

Here, while it is indisputable that the appellant qualifies for PCA services, the appellant’s representative did not credibly document the medical necessity for an increase in hours. The appellant’s representative failed to give the hearing officer any information about which specific tasks required increased time to perform. The only testimony that the appellant’s representative offered was about the difficulty he has with toileting his mother. However, his testimony that it takes two hours to shower and change his mother after one toileting episode is not credible. PCA services do not include cueing, prompting, supervision, guiding, or coaching. The CCA representatives credibly articulated the standard of care for toileting and changing an individual, and the appellant-son did not provide the information needed to determine that there is not enough time allotted for toileting the appellant.

CCA's authorization of 70.25 PCA hours per week for the appellant for time period 10/30/2023 to 10/31/2024 was correct.

Therefore, this appeal is DENIED.

Order for MassHealth

None.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

MassHealth Representative: Commonwealth Care Alliance SCO, Attn: Nayelis Guerrero, 30 Winter Street, Boston, MA 02108