

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Denied in part	Appeal Number:	2403644
Decision Date:	05/30/2024	Hearing Date:	5/1/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for Respondent:

Cassandra Horne, Appeals and Grievances
Manager
Jeremiah Mancuso, Clinical RN Appeals and
Grievances Manager
Michelle Shepard, 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:	Dismissed in part; Approved in part; Denied in part	Issue:	SCO personal care attendant services
Decision Date:	05/30/2024	Hearing Date:	5/1/2024
Respondent's Rep.:	Cassandra Hornes; Jeremiah Mancuso; Michelle Shepard	Appellant's Rep.:	
Hearing Location:	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 February 13, 2024, Commonwealth Care Alliance (CCA), a MassHealth Senior Care Organization (SCO), denied Appellant's Level I appeal of a reduction in Personal Care Attendant (PCA) service hours. Exhibit 1. Appellant filed this appeal in a timely manner on March 11, 2024.¹ Exhibit 2. 130 CMR 610.015(B). A decision to reduce previous authorization for a service is a valid basis for appeal. 130 CMR 610.032(B)(3).

Action Taken by Respondent

CCA denied Appellant's Level 1 appeal of the reduction in PCA service hours from 21.75 hours per week to 17 hours per week.

Issue

¹ Members enrolled in a MassHealth SCO have a right to request a fair hearing after exhaustion of all remedies available through the managed care contractor's internal appeals process. 130 CMR 508.010(B).

Whether CCA correctly denied Appellant's Level 1 appeal of the reduction in PCA service hours. See 130 CMR 422.416(E).

Summary of Evidence

The following is a summary of the testimonies and evidence provided at the hearing:

Appellant and CCA's representatives participated telephonically. Appellant verified her identity and represented herself. CCA was represented by an appeals and grievance supervisor, nurse review manager, and appeal supervisor. CCA also submitted written materials in support of its position. Exhibits 4 and 5. CCA's representative testified that Appellant has been enrolled in CCA's SCO program since October 1, 2023. Initially, Appellant was assessed telephonically in 2022. On December 28, 2023, Appellant was assessed in-person. As result, her PCA service hours through Tempus Unlimited were reduced effective January 21, 2024. Exhibit 4 at 1, 94. Appellant filed a timely Level 1 internal appeal which was denied on February 13, 2024. Exhibit 1. Aid pending which was approved during the pendency of Level 1 appeal was removed effective March 1, 2024. Appellant then filed a timely appeal with the Board of Hearings on March 11, 2024. Exhibit 2.

The CCA representative stated that a total of 4 modifications to PCA service hours were made, to wit: dressing/undressing, meal preparation, laundry, and shopping. The modifications resulted in a total reduction in PCA service hours from 21.75 hours per week to 17 hours per week.

Regarding the reduction in PCA service hours for dressing/undressing, time for dressing was reduced from 105 minutes per week to 49 minutes per week and the time for undressing was reduced from 70 minutes per week to 35 minutes per week based on improvement in Appellant's function. Exhibit 4 at 82. Appellant accepted the reduction in PCA service hours regarding dressing and undressing. The appeal is dismissed with regard to dressing/undressing.

Regarding meal preparation, CCA's representative testified that Appellant was able to prepare her own breakfast and lunch but needed PCA services for dinner preparation. Thus, the PCA service hours were reduced from 90 minutes per day, 7 days a week to 45 minutes per day, 7 days per week for dinner preparation only. *Id.* at 2, 88.

Appellant testified that she never told the CCA evaluator that she could prepare her own breakfast or lunch and CCA never spoke with her PCA. Appellant testified that she only helps occasionally with meal preparation doing tasks such as chopping peppers and buttering the bread. Appellant can make sandwiches and snacks but is unable to use the stove because of her wheelchair and her concern for safely using the stove while sitting in her wheelchair. Appellant added that she may be

able to prepare something to eat but she will not be able to eat healthy and nutritious meals unless her PCA prepares her meals.

Regarding laundry, CCA's representative testified that Appellant is able to fold and sort her own laundry and that the laundry is located inside the residence. The PCA service hours were reduced from 75 minutes per week to 60 minutes per week which is the maximum time allowed for laundry routinely performed inside the residence. *Id.* at 2, 36, 89.

Appellant testified that she does not do the laundry because the machines are in the basement, and she cannot use the stairs. She said that her PCA does 4 loads of laundry per week and that he washes her clothes separately from his own. Appellant testified that while she wears disposable briefs, she does have occasional accidents, mostly on her clothing creating excessive laundry.

Regarding shopping, CCA's representative testified that because Appellant lives with her grandson (also her PCA), the household shopping is performed on a shared basis. As Appellant lives with a family member, CCA reduced the shopping time from 75 minutes per week to 45 minutes per week. *Id.* at 2, 36, 90.

Appellant testified that she does not do any of her own shopping. Appellant testified that her PCA frequently makes separate trips to the pharmacy to pick up her prescriptions as they become available. She uses CVS pharmacy which it is not located inside her local grocery store. Appellant testified that often, her PCA goes to the store daily.

Findings of Fact

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

1. Appellant is a MassHealth member over the age of 65 whose primary diagnoses include obesity, diabetes, and transient ischemic attack. Exhibit 4 at 2, 5-6.
2. Appellant has been enrolled in CCA's SCO program since October 1, 2023.
3. In 2023, Appellant received a total of 21.75 hours weekly for PCA services. *Id.* at 1.
4. On December 28, 2023, Appellant had an in-person assessment which resulted in CCA reducing appellant's PCA service hours to 17 hours weekly. *Id.* at 1.
5. Appellant filed a timely Level 1 internal appeal which was denied on February 13, 2024. Exhibit 1.
6. Appellant then filed a timely appeal with the Board of Hearings on March 11, 2024.

Exhibit 2.

7. Appellant's live-in grandson is also her PCA.
8. For meal preparation, CCA modified the requested 90 minutes per day, 7 days a week to 45 minutes per day, 7 days per week for dinner preparation only. Exhibit 4 at 2, 88.
9. CCA's representative testified that Appellant was able to prepare her own breakfast and a light lunch but needed PCA services for dinner preparation.
10. Appellant testified that she is able to prepare simple meals, but feels unsafe using the stove due to her a wheelchair.
11. Regarding laundry, CCA modified the requested 75 minutes per week to 60 minutes per week, testifying that the laundry is located inside the residence and Appellant is able to fold and sort her own laundry. *Id.* at 2.
12. Regarding shopping, CCA modified the requested 75 minutes per week to 45 minutes per week, testifying that the household shopping is performed on a shared basis by the live-in grandson. *Id.* at 2.

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.

MassHealth covers assistance with the following PCA tasks in pursuant to 130 CMR 422.410.

(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.

Here, there is no dispute that Appellant qualifies for PCA services as reflected by the record. At the hearing, Appellant accepted CCA's reduction in PCA service hours for dressing and undressing from 105 hours per week to 49 hours per week for dressing and from 70 hours per week to 35 hours per week for undressing. The appeal is dismissed with regard to dressing.

Regarding meal preparation, this appeal is approved in part. It is undisputed that Appellant has some functional ability to perform her own meal preparation, such as buttering bread and making a sandwich. However, Appellant's testimony that she feels unsafe using a stove is credible. Based on the information presented at hearing, Appellant offered evidence to show that she requires additional meal preparation assistance. Based on CCA's guidelines for assistance for meal preparation (Exhibit 4 at 37), Appellant's evidence demonstrates that she is eligible for a portion of time for assistance with meal preparation for breakfast and lunch. Accordingly, this appeal is approved in part to allow an additional 105 minutes per week for meal preparation, which provides 5 minutes daily for breakfast and 10 minutes daily for lunch.

Regarding laundry, this appeal is denied. Appellant has not offered sufficient evidence demonstrating why more than 60 minutes per week for laundry is warranted. Though Appellant testified that her laundry needs are greater due to incontinence, the record reflects that Appellant has the functional ability to do part of the task such as folding.

Regarding shopping, this appeal is approved in part. CCA reduced the number of PCA service hours from 75 minutes per week to 45 minutes per week because Appellant's PCA is her grandson and part of the household. CCA's notes indicate that the PCA combines his own shopping with Appellant's and therefore it is a shared task. Appellant disputed this, testifying that her PCA shops separately. Appellant testified that the PCA also picks up her prescriptions as needed and not in conjunction with grocery shopping. Though MassHealth regulations provide that family members will provide assistance with most IADLs, 130 CMR 422.410(C)(1), Appellant's grandson does not meet the definition of "family member" as set forth in 130 CMR

422.402.² Though there is a discrepancy between the evaluation report and Appellant's testimony, Appellant offered reasonable testimony to allow an increase the shopping task to 60 minutes per week.

Order for Respondent

Restore PCA service hours for the following tasks, effective March 1, 2024:

- Meal preparation: 60 minutes per day, 7 days per week, for a total of 420 weekly minutes; and
- Shopping: 60 minutes per week.

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

² Pursuant to 130 CMR 422.402, a "[f]amily [m]ember [is] the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative."

