

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Denied in part	Appeal Number:	2404571
Decision Date:	5/21/2024	Hearing Date:	5/1/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:

Pro se

Appearance for Respondent:

Cassandra Horne, Appeals and Grievances
Manager
Jeremiah Mancuso, Clinical RN Appeals and
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Hannah Guskie, 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:	Modification of Personal Care Attendant services
Decision Date:	5/21/2024	Hearing Date:	5/1/2024
Respondent's Rep.:	Cassandra Hornes; Jeremiah Mancuso; Hannah Guskie	Appellant's Rep.:	Pro se
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

Through a notice dated February 2, 2024, Commonwealth Care Alliance (CCA), a MassHealth Senior Care Organization (SCO), denied the appellant's Level I appeal of a reduction in Personal Care Attendant (PCA) service hours. See Exhibit 1. The appellant filed this appeal in a timely manner on March 25, 2024.¹ See 130 CMR 610.015(B) and Exhibit 2. The appellant has exhausted CCA's internal appeals process. See 130 CMR 508.010(B). A decision to reduce prior authorization for a service is a valid ground for appeal. See 130 CMR 610.032(B)(3).

Action Taken by MassHealth

CCA denied the appellant's Level 1 appeal of the reduction in PCA service hours from 43 hours per week to 31.75 hours per week.

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. See 130 CMR 508.010(B).

Issue

Whether CCA correctly denied the 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:

The appellant and CCA's representatives participated telephonically. 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. (Exhibit 6, pp. 1-3, 180-192). CCA's representative testified that the appellant has been enrolled in CCA's SCO program since September 1, 2023. CCA received a prior authorization request for renewal of services submitted by [REDACTED] the Appellant's Personal Care Management (PCM) Agency. (Exhibit 1, Exhibit 6) On November 15, 2023, the appellant had a routine PCA re-evaluation which resulted in CCA reducing appellant's PCA hours to 17.75 day and 14 night hours weekly effective February 4, 2024. (Exhibit 6, p. 1). Aid Pending was approved, however, the Appellant declined aid pending. (Testimony, Exhibit 5) The appellant filed a timely Level 1 internal appeal which was denied on February 2, 2024 (Exhibit 1). The appellant then filed a timely appeal with the Board of Hearings on March 25, 2024. (Exhibit 2).

CCA representative stated that a total of 8 modifications to PCA service hours were made, to wit: mobility, hair, grooming, dressing/undressing, bladder, medications, meal preparation, and special needs. The modifications resulted in a total reduction in PCA service hours from 43 hours per week to 31.75 hours per week.

Regarding the denial of PCA service hours for mobility, CCA representative testified that the appellant was previously receiving 252 minutes per week due to obesity, chronic pain, dizziness with position changes, and knee pain. During the re-evaluation on November 15, 2023, the RN observed the appellant transferring in and out of bed independently and ambulating in the home independently. As result, CCA denied PCA service hours for mobility. (Exhibit 6, pp. 2-3).

The appellant verified her identity and admitted that she was having a good day on the day of her re-evaluation. However, she testified that she continues to experience dizziness with position changes, has difficulty with her balance, and her knees lock routinely. She said that when her knees lock, she must wait out her unsteadiness and allow however long for her knees to unlock. She said that she had suffered from at least two falls in the past two months and in March she suffered from a wrist fracture because of her fall. The appellant added that her cast was removed two weeks ago, and she has difficulty utilizing her cane because she is right-handed, and she fractured her right wrist. The appellant added that she sleeps in her recliner as she is unable to get in and

out of her bed. Consequently, she could not understand how the reporter observed her transferring in and out of her bed. (Testimony) No resolution was reached regarding this modification, and the issue is further addressed infra in the Analysis and Conclusions of Law section of this decision.

Regarding hair, CCA representative testified that since the appellant washes her hair 3 times per week, the number of episodes for hair washing was reduced from 7 to 3 times per week but the minutes per episode remained the same. The appellant agreed with this testimony, and this modification was acceptable to the appellant. (Testimony) Accordingly, this issue is resolved in this instant appeal. (Exhibit 6, pp.3, 183).

Regarding grooming, CCA testified that the appellant is independent with her grooming by shaving her own legs. She does not require as much time for styling her hair and has a Podiatrist for her toenail trimming. Accordingly, CCA reduced the time for styling hair from 5 minutes to 3 minutes and denied time for shaving and toenail trimming. (Exhibit 6, pp.3, 185).

The appellant agreed with the reduction of time for styling her hair but testified that she is unable to shave her own legs. She also testified that she is unable to reach her toenails and that her PCA trims her toenails for her. She said that she is diabetic but does not have a Podiatrist for toenail trimming. Appellant testified that she has been unable to find a Podiatrist who is within a reasonable distance and accepts new patients. (Testimony) CCA agreed to reinstate the time for shaving legs back to 5 minutes per day 3 times a week, however, would not reinstate PCA service hours for toenail trimming. CCA stated that due to appellant's diabetes causing possible medical complications, she should not have anyone other than a Podiatrist trim her toenails. (Testimony) Accordingly, the issue of grooming is resolved for this instant appeal except for the modification in PCA service hours relevant to toenail trimming. (Exhibit 6, p. 3).

Regarding dressing and undressing, CCA representative testified that time was modified because the appellant is more independent. (Exhibit 6, pp. 3, 186).

The appellant testified that she has difficulty dressing and undressing. She cannot thread her legs into her pants or reach her socks and shoes. She added that she is unable to button her shirts. (Testimony) Based on this testimony, CCA representative restored the time for PCA service hours back to 105 minutes per week for dressing and 105 minutes per week for undressing. Accordingly, this issue is resolved in this instant appeal. (Exhibit 6, p. 3).

Regarding toileting, CCA kept the overall time for toileting the same but made modifications regarding the division of time between bladder and bowel care. This modification was acceptable to the appellant. Accordingly, this issue is resolved in this instant appeal. (Exhibit 6, pp.3, 188).

Regarding medications, CCA representative testified that the appellant is independent with medication management. The appellant no longer uses a nebulizer and utilizes a med minder machine to be reminded about taking her medications. The appellant agreed with this testimony and accepted this modification. Accordingly, this issue is resolved in this instant appeal. (Exhibit 6, pp. 3, 189).

Regarding meal preparation, CCA representative testified that appellant was allowed PCA service hours for 15 minutes per day for breakfast, 20 minutes per day for lunch, 35 minutes per day for dinner, and 5 minutes per day for snacks. Since the appellant was independent with breakfast and snacks and could reheat dinner for lunch, they eliminated the PCA service hours from breakfast and snacks and reduced the time allotted for lunch. (Exhibit 6, pp. 3, 192).

The appellant testified that since her refrigerator is located in the basement, she is unable to retrieve the food. Her PCA is the person that does that for her. (Testimony) Based on this testimony, CCA representative restored the PCA service hours back to 525 minutes per week. Accordingly, this issue is resolved in this instant appeal. (Exhibit 6, p. 3).

Regarding special needs, CCA representative testified that the appellant no longer needs the time for cleaning her nebulizer or her walker because she no longer uses them. The appellant concurred with this testimony. Accordingly, this issue is resolved in this instant appeal. (Exhibit 6, p. 3).

Findings of Fact

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

1. The appellant is a MassHealth member over the age of 65 whose primary diagnoses include Asthma, Depression, Anxiety, Incontinence, Hypothyroidism, history of falls, knee replacement, impaired mobility, obesity, and shoulder pain. (Testimony and Exhibit 6, pp. 7-9, 180).
2. The appellant suffers from diabetes. (Testimony).
3. The appellant has been enrolled in CCA's SCO program since September 1, 2023. (Testimony and Exhibit 6, p. 1).
4. In 2023, the appellant received a total of 29 day and 14 night hours weekly for PCA services. (Testimony and Exhibit 6, p.1).
5. On November 15, 2023, the appellant had a routine PCA re-evaluation which resulted in CCA reducing appellant's PCA service hours to 17.75 day and 14 night hours weekly. (Exhibit

6 and p. 1).

6. The appellant filed a timely Level 1 internal appeal which was denied on February 2, 2024 (Testimony and Exhibit 1).
7. The appellant then filed a timely appeal with the Board of Hearings on March 25, 2024. (Testimony and Exhibit 2).
8. Multiple modifications were made to the PCA service hours, 8 modifications in total. (Testimony and Exhibit 6, pp. 2-3).
9. Regarding the modification to the mobility time, no time was allotted. (Testimony and Exhibit 6, p. 2-3).
10. The appellant has difficulty with keeping her balance and has had two falls in the past two months. (Testimony).
11. The appellant fractured her right wrist this past March as result of a fall and her cast was removed two weeks prior to this hearing. (Testimony).
12. The appellant sleeps in her recliner because she is unable to get in and out of her bed. (Testimony).
13. Regarding hair washing, the number of episodes per week were decreased from 7 times per week to 3 times per week by CCA, but the time for each episode remained the same. The appellant accepted this change. (Testimony and Exhibit 6, pp. 3, 183).
14. Regarding grooming, CCA reduced the time for styling hair which was accepted by the appellant. CCA denied time for shaving of appellant's legs. After discussion at hearing, CCA reinstated the time for shaving legs back to 5 minutes per day 3 times per week. CCA denied time for toenail trimming. (Testimony and Exhibit 6, pp. 3, 183-185).
15. Regarding toenail trimming, CCA denied PCA service hours. (Testimony, Exhibit 6, p. 3).
16. The appellant does not have a Podiatrist. She has been unable to find a Podiatrist in her area who accepts new patients. The appellant's PCA has been trimming her toenails. (Testimony).
17. Regarding dressing and undressing, no time was allotted by CCA. After discussion at the hearing, CCA restored the time back to 105 minutes per week for dressing and 105 minutes per week for undressing. (Testimony and Exhibit 6, p. 3).
18. Regarding toileting, the overall time for toileting remained the same but modifications

were made regarding the division of time between bladder and bowel care. This was acceptable to the appellant. (Testimony and Exhibit 6, pp. 3, 186).

19. Regarding medication assistance, no time was allotted by CCA. (Testimony and Exhibit 6, pp. 3, 189).
20. The appellant is independent with taking her medication and uses a med minder machine. (Testimony).
21. Regarding meal preparation, CCA denied the PCA service hours allotted for breakfast and snacks, reduced the time for lunch, but increased the time for dinner preparation. After discussion at the hearing, CCA restored the PCA service hours back to 525 minutes per week. (Testimony and Exhibit 6, pp. 3, 192).
22. Regarding special needs, no time was allotted by CCA. (Testimony and Exhibit 6, p. 3).
23. The appellant no longer uses her nebulizer or her walker. She walks with a cane now. (Testimony).

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.” See G.L. c. 118E, § 9D(a).

In pursuant to 130 CMR 508.010, MassHealth members who are enrolled in a SCO are entitled to a fair hearing under 130 CMR 610.000: 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.

Here, the appellant has exhausted all remedies available through the SCO's internal appeal

process and has timely filed this appeal with the Board of Hearings. Id.

Pursuant to 130 CMR 508.001(C), MassHealth members who are 65 years of age or older may 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. See also 130 CMR 508.008(C). Commonwealth Care Alliance (CCA) is a MassHealth SCO which provides covered services including PCA services to assist with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL). (Exhibit 7, CCA's Member Handbook, p. 121).

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 the appellant qualifies for PCA services as reflected by the record. At the hearing, CCA agreed to restore PCA time allotted for dressing and undressing, meal preparation, and shaving of the legs. Since the parties reached a resolution regarding these issues, the appeal of these modifications is DISMISSED subject to the order below.

Regarding toileting, CCA did not make any changes to the overall time allotted for toileting but modified the division of time between bladder and bowel care. At the hearing, the appellant accepted this change. Since the parties reached a resolution regarding this issue, the appeal of this modification is DISMISSED.

At the hearing, the appellant accepted the modifications made by CCA to PCA time allotted for

hair washing, styling hair, medication assistance, and special needs. Since the parties reached a resolution regarding these issues, the appeal of these modifications is DISMISSED subject to the order below.

Regarding PCA service hours for toenail trimming, this appeal is DENIED. At the hearing, the appellant testified that she has diabetes but is unable to find a Podiatrist nearby who accepts new patients to perform her toenail trimming. Thus, her PCA is performing this task. CCA's nurse review manager offered credible testimony regarding potential health complications resulting from improper toenail trimming by a non-medical professional considering appellant's diabetes. As such CCA declined to allow PCA service hours for toenail trimming by a non-medical professional. This reasoning is sound and the expert testimony is credible.

Regarding PCA service hours for mobility, this appeal is APPROVED. The appellant credibly testified that she has fallen twice in the past two months. She said that she fractured her right wrist as result of a fall in March and her cast was just removed two weeks ago. This testimony is corroborated by the record. (Exhibit 6, p. 180). Additionally, appellant who is right-handed uses a cane for mobility. Due to her right wrist fracture, she is unable to put her weight on the cane to assist with her mobility. The appellant disputed the observation of CCA reporter who was not present at the hearing but noted in her report that she observed appellant get in and out of her bed. The appellant testified that she has been sleeping in her recliner and could not get in and out of her bed. I found the appellant's testimony to be credible. Given the appellant's unsteadiness evidenced by her multiple falls, her history of falls substantiated by the record, and her difficulty with utilizing her cane due to her wrist fracture, the PCA service hours for mobility should be restored subject to order below.

Order for Respondent

Restore PCA service hours for the following tasks, effective February 4, 2024:

- Mobility: 252 minutes per week;
- Grooming: 5 minutes per day, 3 times per week for shaving legs;
- Dressing/Undressing: 105 minutes per week for dressing and 105 minutes per week for undressing;
- Meal preparation: 525 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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

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