

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2405315
Decision Date:	7/1/2024	Hearing Date:	05/13/2024
Hearing Officer:	Thomas Doyle		

Appearances for Appellant:




Appearances for Respondent:

Cassandra Horne, Operations Manager, Appeals and Grievances Department; Jeremiah Mancuso, R.N., Clinical Manager, Appeals and Grievances; Hannah Guskie, Occupational Therapist, Supervisor PCA Team for CCA; Amy Stebbins, R.N., Utilization Manager, PCA Team, CCA



*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:	Senior Care Organization; Prior Authorization, Personal Care Attendant Services, Modification of Hours
Decision Date:	7/1/2024	Hearing Date:	05/13/2024
Respondent's Reps.:	Cassandra Horne, Jeremiah Mancuso, Hannah Guskie, Amy Stebbins	Appellant's Reps.:	
Hearing Location:	Remote (video; phone)	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 March 8, 2024, Commonwealth Care Alliance (CCA) declined to increase the hours for appellant's Personal Care Attendant (PCA) Services. Appellant is currently approved for 131.25 hours per week. (Ex. 1). The appellant underwent CCA's internal appeals process and received a Denial of Level 1 Appeal on January 10, 2024. (Ex. 9, p. 25). The appellant filed this timely appeal with the Board of Hearings on April 5, 2024. (Ex. 2). An MCO's decision to deny prior authorization of an increase in a requested service is a valid grounds for appeal. See 130 CMR 610.032(B)(2).

Action Taken by Respondent

CCA denied appellant's request to increase appellant's allotted PCA service hours.

Issue

Was CCA correct in denying appellant's request to increase her PCA hours?

Summary of Evidence

Appellant is a MassHealth member over the age of [REDACTED] currently enrolled in CCA's One Care Program. She was represented at the video hearing by her PCA and a friend, and both testified on behalf of appellant. Three CCA representatives appeared via video with one CCA member appearing by telephone. The following is a summary of the testimony given and documentary evidence provided at the hearing.

The CCA representatives testified appellant has been enrolled in the CCA One Care program since January 1, 2018. Appellant's diagnoses include multiple sclerosis, major depressive disorder, hypertension, urine catheter change required and urinary incontinence; she is wheelchair-bound (Ex. 9, pp. 6-7). Appellant is dependent for all activities of daily living (ADLs) and instrumental activities of daily living (IADLs). (Ex. 9, p. 1).

The reason for appellant's appeal was a request from appellant to increase her current PCA hours of 131.25 a week. The 131.25 hours was previously determined after an assessment of appellant on February 20, 2023. The CCA Occupational Therapist Supervisor (OT Supervisor) stated appellant requested the increase in PCA hours due to the death of her husband in [REDACTED] and the loss of informal support. She stated CCA reviewed the February 2023 assessment and CCA determined the February 2023 evaluation gave time for informal support. CCA decided to honor the request for an increase in time for PCA services and conducted the December 22, 2023 assessment. (Ex. 9, p. 56-66). CCA also noted that since appellant's request for an increase in hours was within 90 days of the next annual assessment, the December 2023 assessment was the basis for approving the 131.25 hours per week until March 31, 2025.

This request for an increase in hours was denied by CCA on January 10, 2024. (Ex. 9, p. 25). CCA stated no documentation was provided by appellant to show a change in physical or functional status of appellant at the time of review to justify an increase of appellant's PCA hours. CCA stated that the assessment determined appellant had a reduction in wound care. (Ex. 9, p. 21). CCA stated from the time of the assessment in December 2023 until the review by CCA in January 2024, there were no hospitalizations of appellant and no records showing a change in status of appellant to warrant an increase in hours. The current hours of 131.25 a week were kept in place

through March 31, 2025. The CCA clinical manager testified that at the conclusion of the December 2023 assessment, it was recommended appellant's PCA hours be decreased (Ex. 9, p. 121) because the time allotted per task was deemed excessive per the "time for task" standards. He stated, given appellant's compromised status and history, the CCA Utilization Department decided not to make alterations to the current time and kept appellant at 131.25 hours a week, which is 18.75 hours per day. (Testimony; Ex. 9, pp. 19-20). The clinical manager stated CCA recognizes the benefits of 24-hour care and pointed out that appellant has been approved for 18.75 hours per day. He stated there was no room for an increase in hours because MassHealth regulations do not allow PCA participants to have time for cueing, prompting, supervision or coaching, pursuant to 130 CMR 422.412(C) and CCA, as a Managed Care Organization, has to follow MassHealth regulations. (Testimony; Ex. 9, p. 1).

Appellant was sent written notice of the denial and thereafter CCA received a written appeal request. This written appeal request was reviewed by a CCA medical director and denied on February 29, 2024. (Ex. 9, p. 232). On March 8, 2024, appellant was sent written notification of the Level 1 denial, which is the subject of this appeal. (Testimony; Ex. 1).

Appellant appeared with her PCA and a friend. Appellant stated that the number of hours was not fair as she needs a lot of help, and cutting her hours would not let her obtain that help. Appellant's friend (friend) testified that appellant's husband died in [REDACTED]. He slept next to appellant and was available, if needed, to move appellant in the bed, get her a sip of water or get appellant her meds if she needed them. The friend stated that she (the friend), appellant, and the PCA feel "really strongly" that appellant should qualify for additional PCA hours. The friend stated that she thought the December 2023 assessment was rushed and she did not feel it was an individual assessment. She stated she understood that 24-hour care may not be authorized, but appellant needs and "deserves" it. The friend stated that appellant was "admitted for two UTI's to [REDACTED]". She testified that a urologist at one of the admissions stated appellant needed more PCA hours since her husband passed away.¹ She stated that another letter from appellant's primary care physician, (Ex. 9, p. 55), together with the letter from the urologist, shows two doctors requesting more PCA hours for appellant. The friend stated appellant does not have a PCA 24 hours a day, but added appellant is never alone.

Appellant's primary PCA testified. She stated she helps appellant with her meals. She ensures appellant receives her medications and she supervises other PCA's employed by appellant. She stated she takes appellant shopping and is with appellant "most of the night times."

Findings of Fact

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

¹ This letter was not offered into evidence.

1. Appellant is a MassHealth member over the age of [REDACTED] currently enrolled in CCA's One Care Program. (Testimony).
2. Appellant's diagnoses include multiple sclerosis, major depressive disorder, hypertension, urine catheter change required and urinary incontinence; she is wheelchair-dependent (Ex. 9, pp. 6-7).
3. Appellant's current 131.25 weekly PCA hours (comprised of 110.25 day hours and 21 night hours) had been approved after an assessment of appellant on February 20, 2023, and was reapproved after another assessment in December 2023. (Testimony; Ex. 9, p. 21). Appellant is dependent for all activities of daily living (ADLs) and instrumental activities of daily living (IADLs). (Ex. 9, p. 1).
4. Appellant requested an increase in her current PCA hours of 131.25 hours per week due to the death of her husband in November 2023.
5. Appellant's request for an increase in hours was within 90 days of the next annual assessment, so the December 2023 assessment was the basis for approving the 131.25 hours per week until March 31, 2025. (Testimony).
6. Appellant's request for an increase in hours was denied by CCA on January 10, 2024. No documentation was provided by appellant to show a change in physical or functional status of appellant at the time of review to justify an increase of appellant's PCA hours. (Testimony; Ex. 9, p. 20).
7. As a result of the December 2023 assessment (Ex. 9, pp. 56-66), it was recommended appellant's PCA hours be decreased (Ex. 9, p. 121); but due to appellant's compromised status and history, the CCA Utilization Department decided not to make alterations to the current time and kept appellant at 131.25 hours a week, which is 18.75 hours per day. (Testimony; Ex. 9, pp. 19-20).
8. Appellant was sent written notice of the denial and thereafter CCA received a written appeal request. This written appeal request was reviewed by a CCA medical director, and denied on February 29, 2024. (Ex. 9, p. 232). On March 8, 2024, appellant was sent written notification of the Level 1 denial. (Testimony; Ex. 1).
9. Appellant does not have a PCA 24 hours a day. (Friend Testimony).
10. Appellant's primary PCA takes appellant shopping and is with appellant "most of the night times." (PCA Testimony).
11. No documentation was provided by appellant to show a change in physical or functional status at the time of CCA's review. The December 2023 assessment found appellant has had a

reduction in wound care. (Testimony; Ex. 9, p. 21).

Analysis and Conclusions of Law

MassHealth has contracted with individual private insurance companies, referred to as managed care organizations (MCOs), to deliver care to relevant members under the regulations. One such type of MCO is a senior care organization (SCO), designed to manage the care of certain MassHealth members over the age of [REDACTED]. Massachusetts law defines an SCO as “a comprehensive network of medical, health care, and social service providers that integrates all components of care, either directly or through subcontracts.” G.L. c. 118E, § 9D(a). Further, “SCOs will be responsible for providing enrollees with the full continuum of Medicare and MassHealth covered services.” The MassHealth regulations establish the member selection process for SCOs at 130 CMR 508.008.

An SCO has specific statutory and regulatory requirements by which it must abide regarding the scope of its coverage and its internal appeal process. “[T]he amount, duration, and scope of Medicaid-covered services shall be at a minimum no more restrictive than the scope of services provided under MassHealth standard coverage.” G.L. c. 118E, § 9D(d). In essence, the SCO must provide everything under the MassHealth regulations and may have services or coverage that extend beyond the scope of those provided by MassHealth.

MassHealth regulations apply to SCOs and provide that “[m]embers are entitled to a fair hearing under 130 CMR 610.00: MassHealth Fair Hearing Rules to appeal...a determination by . . . one of the . . . SCOs . . . if the member has exhausted all remedies available through the contractor’s internal appeals process.” 130 CMR 508.010(B). The SCO then has the obligation to follow the fair hearing rules when defending decisions before the Board of Hearings.

Typically, “[a]ll medical services to members enrolled in an MCO . . . are subject to the prior authorization and referral requirements of the MCO.” 130 CMR 508.004(B)(2). MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.²
- (3) The member, as determined by the PCM agency, requires physical

² ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

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.

130 CMR 422.403(C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

. . . Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality.

(130 CMR 450.204(A) and (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).

The appellant has the burden "to demonstrate the invalidity of the administrative determination." [REDACTED]
Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." [REDACTED]

Appellant seeks an increase in PCA hours over the 131.25 hours per week approved in February 2023 and reapproved in an assessment done in December 2023. Appellant's friend testified that they all feel very strongly that appellant should qualify for more PCA hours. She did not specify what hours should be increased regarding the individual ADLs and IADLs. Other than limited testimony, the only other evidence offered by appellant was a note from her doctor in which the doctor states it is a medical necessity appellant has PCA support 24 hours a day, 7 days a week. However, the letter is lacking in specificity on the allotment of those hours and why they are necessary, other than addressing appellant's diagnosis, which CCA already considered in assessing appellant's PCA needs. Unlike the representatives from CCA, the doctor was not present to be examined on her conclusion that 24/7 care is necessary. The second doctor's letter mentioned by appellant's friend was not offered into evidence. The friend read the letter out loud at hearing and this second doctor also stated appellant should have 24/7 PCA hours. Again, the doctor's conclusion is lacking in any specificity on what hours should be increased, and that second doctor was also not subject to examination at hearing.

The friend stated that, because appellant's husband had died, she now slept alone at night and there was no one to bring her a sip of water or provide appellant with medications if needed or if appellant needed to be moved in bed. However, appellant is approved for 18.75 hours a day and allocated 21 nighttime hours per week. The extra time requested by appellant is mainly for supervision or guiding appellant, which is not covered by the PCA regulations. Appellant has not shown, on this record, that additional PCA assistance time is medically necessary. Lastly, appellant has not offered any evidence that her physical or functional status has changed to warrant an increase in PCA hours. Conversely, the December 2023 assessment showed appellant has had a reduction in wound care.

On the record before me, appellant has not met her burden, and the appeal is DENIED.

Order for Respondent

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.

Thomas Doyle
Hearing Officer
Board of Hearings

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

[REDACTED]

[REDACTED]