

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |                 |                       |            |
|-------------------------|-----------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Denied          | <b>Appeal Number:</b> | 2406136    |
| <b>Decision Date:</b>   | 7/8/2024        | <b>Hearing Date:</b>  | 06/03/2024 |
| <b>Hearing Officer:</b> | Alexandra Shube |                       |            |

**Appearance for Appellant:**

*Via telephone:*



**Appearance for Respondent, Commonwealth  
Care Alliance (CCA):**

*Via telephone:*

Cassandra Horne, Appeal & Grievances Mgr.  
Jeremiah Mancuso, Clinical RN Appeals &  
Grievance Mgr.



*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

|                          |                                     |                          |                           |
|--------------------------|-------------------------------------|--------------------------|---------------------------|
| <b>Appeal Decision:</b>  | Denied                              | <b>Issue:</b>            | Prior Authorization – PCA |
| <b>Decision Date:</b>    | 7/8/2024                            | <b>Hearing Date:</b>     | 06/03/2024                |
| <b>CCA's Rep.:</b>       | Cassandra Horne<br>Jeremiah Mancuso | <b>Appellant's Rep.:</b> | Pro se<br>Friend          |
| <b>Hearing Location:</b> | Quincy Harbor South<br>Remote       | <b>Aid Pending:</b>      | 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 Denial of Level 1 Appeal dated April 12, 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 was not medically necessary. Exhibit 1. The appellant filed this appeal in a timely manner on April 16, 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 34.5 hours per week down to 14.24 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 he had requested.

## Summary of Evidence

CCA was represented at the hearing by the appeals and grievances manager and the clinical nurse appeals and grievances manager. The appellant appeared at the hearing with his long-term partner who is also his PCA. All parties appeared via telephone. Through testimony and documentation, CCA provided the following: the appellant is an adult under the age of 65 who has been enrolled in CCA One Care, an integrated care organization (ICO), since June 1, 2022. He has primary diagnoses of unspecified fracture of right calcaneus; initial encounter for closed fracture; unspecified fracture of left calcaneus; anxiety; osteoarthritis; congenital deformity of spine; and spondylosis of lumbosacral joint. Ex. 5 at 4. Per his representative with whom he lives, the appellant has ankle pain, back pain, back spasm, difficulty standing for long periods of time, and ankle swelling after walking. *Id.* at 4. On February 28, 2024, CCA received a prior authorization request from the appellant personal care management (PCM) agency, [REDACTED], requesting 34.5 hours per week of PCA assistance based off an initial PCA evaluation on February 16, 2024. *Id.* at 1 and 9.

On March 12, 2024, CCA modified the request and approve the appellant for 13.75 hours of PCA assistance through February 28, 2025. *Id.* at 15-16. CCA modified the request because it determined the amount of time requested was not medically necessary based on the February 16, 2024 assessment. *Id.* at 16. The records showed that the appellant could help with some personal care tasks. He is independent with mobility and transfers using a cane; needs minimal help with shower transfers and bathing; needs set-up help only with oral care; minimal help with dressing and dressing; independent with bladder care but needs help transferring with toileting; and can use a urinal or bedside commode without help. *Id.* Additionally, he lives with his girlfriend (who is his PCA and appeal representative) and children, so household tasks are shared. *Id.* After an internal Level 1 appeal, CCA notified the appellant on April 12, 2024 that it approved him for 14.24 hours of PCA assistance per week. Ex. 1 at 1. This is the notice under appeal.

CCA stated that the appellant had previously been active with the Adult Foster Care (AFC) program as a Level 1 consumer, but that program was terminated in August 2023. Ex. 5 at 1. CCA consulted with the AFC nurse who reported that the appellant “has been independent for the better part of 2 years, and that she saw firsthand that [the appellant] was capable of much more than the caregiver... reported.” *Id.* A physical therapy evaluation on November 10, 2023 stated the following: overall ROM in extremities within functional limits; strength: grossly within functional limits; bed mobility: modified independent; transfers: modified independent; gait: without assistive device independent and safe, tolerated more than 300 feet. *Id.* Occupational therapy assessment attached to the PCA evaluation from the PCM agency documented that the appellant is independent with mobility, toileting, eating, medications, transfers in/out of bed, and transfers on/off toilet. He requires cueing/monitoring with bathing

and transfers in/out of the tub/shower and minimum assistance with dressing/undressing. *Id.* at 1 and 163.

CCA modified the following tasks: mobility, bathing, grooming, dressing/undressing; overnight hours; and housekeeping. As part of the internal appeal, CCA restored some time for instrumental activities of daily living (IADLs) because, although he lives with his long-term partner, they are not legally married, so MassHealth guidelines which limit time for most IADLs do not apply. *Id.* Shopping was fully restored to the requested 60 minutes per week. Housekeeping was partially restored to 30 minutes per week. *Id.*

Documentation noted that the appellant has requests pending for additional durable medical equipment (DME)/assistive devices, including a new cane, high raised toilet seat, and shower chair. *Id.* at 1. Documentation also noted a consult on October 30, 2023 with the AFC nurse who stated the following: the last screen completed by the agency was in August 2023 and the appellant was independent with all his ADLs and he had been for the better part of two years. *Id.* at 2. The AFC nurse witnessed firsthand the appellant run up and down the stairs, drive his car, and remove a baby in a car seat and carry the car seat up the stairs without the assistance of any DME or person. *Id.* The AFC nurse also stated that she witnessed the appellant cook and clean for himself. *Id.*

Due to the inconsistencies between what the appellant and caregiver reported and the observations of trained clinical staff, the reviewing nurse strongly recommended an internal PT/OT evaluation by CCA before any additional services or hours were approved. *Id.*

### **Mobility**

The appellant requested 168 minutes per week for mobility broken down into 2 minutes, 4 times per day, 7 days per week for assistance with mobility and 2 minutes, 8 times per day, 7 days per week for assistance with transfers. *Id.* at 142. CCA approved 56 minutes per week (1 minute, 4 times per day, 7 days per week for both mobility and transfers) because the request was excessive for someone with his functional mobility. CCA testified that the appellant is a minimum level of assist with mobility. He is noted to need very little assistance inside the home. His range of motion is within functional limits.

The appellant's representative explained that the appellant had fractures in both feet after a high fall over five years ago and completely shattered both heels. He had surgery to reconstruct both heels, but he deals with a lifetime of pain and arthritis in his ankles and heels. He has muscle weakness and one foot will give out which causes him to fall. She needs to be there to catch him. He also has arthritis in his hands. He does not use a cane or assistive device within the home. He can walk, but he has poor balance and needs someone by his side. She walks with him hand-over-hand or with her hands on his hips because she does not know when he will lose his balance or his ankles will lock up. She always walks with him from room to room. If no one is

home, he should not move around without help and she prepares everything for him before she goes out. With AFC, he had 24-hour care. If she goes out for a long time, his parents stop by. There always needs to be someone with him. His children are young, school-aged and cannot help. She stated that the appellant has never used a cane but he has a wheelchair from when he was hurt. They will bring the wheelchair with them if they know he needs to stand for a long time. She felt the time requested for mobility and transfers was about accurate. The appellant has post-traumatic stress disorder (PTSD) and depression. It is really hard for the PCA to get him out of bed. His feet hurt him and his back spasms and once he stands up, he is in pain so it takes a minute for him to get moving. He has some strength and on a good day, he can stand off the couch by himself, but once he is up, she does not leave his side. He also needs help getting up onto the bed because of the arthritis in his hands. The amount of assistance he needs differs depending on the day.

### **Bathing**

The appellant requested 210 minutes per week (or 30 minutes per day) for PCA assistance with bathing. CCA approved 105 minutes per week (or 15 minutes per day). *Id.* at 144. Documentation showed he is a moderate assist for bathing because he needs help in and out of the shower; however, he has a shower chair and can wash the majority of body, so is primarily independent once in the shower.

The appellant's representative testified that he can only wash his top half. Bending is a problem because of his back spasms. His arthritis in his hands limits his ability to wash himself in the shower. She washes his lower half and sometimes the upper half of his body. During the winter, his arthritis is particularly bad and she has to wash his whole body. But his hands are bad most of the time and getting worse. In addition to the arthritis, his hands lock up and then she needs to do everything. She stated that 15 minutes was not enough time for showering.

### **Grooming: Oral Care**

The appellant requested 66 minutes per week for PCA assistance with grooming which included 28 minutes per week (2 minutes, 2 times per day, 7 day per week) for oral care. *Id.* at 145. CCA approved 52 minutes for grooming which included 14 minutes per week (1 minute, 2 times per day, 7 days per week) for oral care because documentation showed that the appellant only needs help with set up and can do the rest of oral care on his own.

The appellant's representative stated that some days he can brush his teeth himself and some days he can't. She felt that there were more days he can't do it on his own than can.

### **Dressing and Undressing**

The appellant requested 105 minutes per week (15 minutes, 1 time per day, 7 days per week) for dressing and 70 minutes per week (10 minutes, 1 time per day, 7 days per week). CCA modified the time for dressing to 70 minutes per week (or 10 minutes per episode) and undressing, to 35 minutes per week (or 5 minutes per episode). *Id.* at 146. CCA modified the request because the documentation showed that he needs minimum assistance for dressing and undressing and can assist with some of the task. According to the Time-for-Tasks Guidelines used by MassHealth for the PCA program, the average amount of time for someone who is a minimum assist for dressing is 7 minutes per episode (and CCA approved 10 minutes per episode) for dressing and 5 minutes per episode for undressing. *Id.* at 31.

The appellant's representative testified that the appellant cannot dress the lower half of his body because of back spasms and poor balance. It is very difficult for him to get dressed and undressed because of his arthritis in his hands, so she does most of it for him. Sudden movements can cause back spasms, so they have to move slowly. She thinks he needs at least 15 minutes to get dressed.

### **Bladder Care and Night Time Bladder Care Hours**

The appellant requested 63 minutes per week for bladder care (3 minutes, 3 times per day, 7 day per week). *Id.* at 148. CCA approved 21 minutes per week (1 minutes, 3 times per day, 7 days per week) because documentation from the occupational therapy evaluation on January 31, 2024 showed the appellant is independent with mobility, toileting, eating, medications, transfers in/out of bed, and transfers on/off toilet. *Id.* at 163. He is also independent with toileting hygiene and clothing management. CCA approved time for him for supervision while in the bathroom. While the MassHealth regulations do not typically include time for supervision, CCA explained that it is able to approve time for cueing and/or monitoring. *Id.* at 39-40.

The appellant also requested 21 minutes per week (3 minutes, 1 time per night, 7 nights per week) for bladder care at night. *Id.* at 148. CCA did not approve any time for nighttime assistance with bladder care because the appellant can use a bedside commode or urinal. *Id.* at 10.

The appellant's representative stated that the appellant needs help with mobility and transfers in and out of the bathroom. She pointed out that the comments in the February PCA evaluation states he "needs assistance with toileting due to arthritis in all extremities and surgical repair of both heels. Consumer needs assistance to transfer on and of the toilet, assistance with toileting hygiene and clothes management." *Id.* at 149. She stated that occupational therapy evaluation was not accurate. He is not independent with any of those activities. The assessor was only at the house for about five minutes and the appellant's representative was by his side helping him the entire time during those tasks. She referred to the same occupational therapy evaluation and pointed out that it also says the appellant has active range of motion deficits, pain, impaired

mobility/weight bearing which affect his standing tolerance, balance, bending, reaching, and active range of motion. *Id.* 163. She felt that was in contradiction with the level of independence indicated on the same page by CCA. Additionally, she testified that it is not safe for the appellant to get out of bed at nighttime by himself. There is nothing in the bedroom for him to go to the bathroom in and he should be able to go to the bathroom at night.

### **Housekeeping**

The appellant requested 60 minutes per week for housekeeping. *Id.* at 153-154. CCA approved 30 minutes per week for housekeeping because he lives with other able-bodied people who can assist with the shared areas. The PCA cannot be compensated for cleaning shared areas. CCA felt that 30 minutes per week was sufficient for his personal areas (his bedroom and his bathroom).

The appellant's representative testified that he cannot help with any of this because he cannot stand for long periods of time. She stated that 30 minutes per week (or 15 minutes for his bedroom and 15 minutes for his bathroom) was not enough time.

## **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 June 1, 2022.
2. The appellant's primary diagnoses include unspecified fracture of right calcaneus; initial encounter for closed fracture; unspecified fracture of left calcaneus; anxiety; osteoarthritis; congenital deformity of spine; and spondylosis of lumbosacral joint. He has ankle pain, back pain, back spasm, difficulty standing for long periods of time, and ankle swelling after walking.
3. On February 28, 2024, CCA received a prior authorization request from the appellant PCM agency, [REDACTED], requesting 34.5 hours per week of PCA assistance based off an initial PCA evaluation on February 16, 2024.
4. On March 12, 2024, CCA modified the request and approve the appellant for 13.75 hours of PCA assistance through February 28, 2025.
5. The appellant is independent with mobility, toileting, eating, medications, transfers in/out of bed, and transfers on/off toilet. He requires cueing/monitoring with bathing and transfers in/out of the tub/shower and minimum assistance with dressing/undressing.

6. The appellant lives with his girlfriend (who is his PCA and appeal representative), so household tasks are shared.
7. The appellant requested 168 minutes per week for mobility broken down into 2 minutes, 4 times per day, 7 days per week for assistance with mobility and 2 minutes, 8 times per day, 7 days per week for assistance with transfers.
8. CCA approved 56 minutes per week (1 minute, 4 times per day, 7 days per week for both mobility and transfers) because the request was excessive for someone with his functional mobility.
9. The appellant requested 210 minutes per week (or 30 minutes per day) for PCA assistance with bathing.
10. CCA approved 105 minutes per week (or 15 minutes per day) for bathing.
11. The appellant requested 28 minutes per week (2 minutes, 2 times per day, 7 day per week) for oral care.
12. CCA approved 14 minutes per week (1 minute, 2 times per day, 7 days per week) for oral care because documentation showed he only needed help with set up.
13. The appellant requested 105 minutes per week (15 minutes, 1 time per day, 7 days per week) for dressing and 70 minutes per week (10 minutes, 1 time per day, 7 days per week) for undressing.
14. CCA approved 70 minutes per week (or 10 minutes per episode) for dressing and 35 minutes per week (or 5 minutes per episode) for undressing.
15. The appellant requested 63 minutes per week for bladder care (3 minutes, 3 times per day, 7 day per week).
16. CCA modified the requested 21 minutes per week (1 minutes, 3 times per day, 7 days per week) because documentation from the occupational therapy evaluation on January 31, 2024 showed the appellant is independent with mobility, toileting, eating, medications, transfers in/out of bed, and transfers on/off toilet.
17. The appellant also requested 21 minutes per week (3 minutes, 1 time per night, 7 nights per week) for bladder care at night.
18. CCA did not approve any time for nighttime assistance with bladder care because the appellant can use a bedside commode or urinal.



19. The appellant requested 60 minutes per week for housekeeping.
20. CCA approved 30 minutes per week for housekeeping because he lives with other able-bodied people who can assist with the shared areas and the PCA cannot be compensated for cleaning shared areas.

## 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). 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).

As an ICO, however, CCA can provide more to members than MassHealth allows, but not less. According to the CCA medical necessity guidelines, CCA will provide PCA assistance provided in the form of cueing and/or supervision, in addition to hands-on physical assistance. See Exhibit 5 at 39-40. A PCA may not be provided for the benefit of non-disabled household members; for example, cleaning common areas or laundry for other persons living in the home. *Id.*

It is the appellant's burden to show that CCA's determination was in error and he has not done so here. This appeal is denied as to all modifications.<sup>1</sup> While the appellant and his representative provided credible testimony, they have not provided sufficient evidence to show that PCA assistance with the modified ADLs and IADLs (mobility, bathing, oral care, dressing and undressing, bladder care, bladder care at night, and housekeeping) take longer than the time already approved. There is too much conflicting information between the appellant's testimony and the medical documentation for the testimony alone to outweigh the significant documentation, which included the PCM agency's evaluation, an occupational therapy

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<sup>1</sup> This decision does not preclude the appellant from requesting an adjustment through his PCM agency with the appropriate, supporting documentation; nor does it preclude further PT/OT evaluation by CCA to re-evaluate the appellant's care needs, as suggested by the reviewing nurse.

evaluation, and first-hand observations from the appellant's AFC nurse and other trained clinical staff. Additionally, there are less costly alternatives to PCA assistance that must be considered such as assistive devices like a cane, walker, and/or bedside commode or urinal.

For these reasons, the appellant has not met his burden of proof and has not demonstrated that additional PCA time for mobility, bathing, oral care, dressing and undressing, bladder care, bladder care at night, and housekeeping is medically necessary.

## **Order for Commonwealth Care Alliance**

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.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

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

[REDACTED]