

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2409291
Decision Date:	08/29/2024	Hearing Date:	07/25/2024
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:
Pro se

Appearances for MassHealth:
Cassandra Horne, Appeals and Grievances
Manager, Commonwealth Care Alliance (CCA)
Jeremiah Mancuso, R.N., Clinical RN Appeals
and Grievance Manager, CCA
Kaley Ann Emery, Appeals Supervisor, 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:	Approved in part; Denied in part	Issue:	Prior Authorization; Personal Care Attendant (PCA) Services
Decision Date:	08/29/2024	Hearing Date:	07/25/2024
MassHealth's Reps.:	Cassandra Horne; Jeremiah Mancuso, R.N.; Kaley Ann Emery	Appellant's Rep.:	Pro se
Hearing Location:	Worcester MassHealth Enrollment Center - Room 1 (Telephone)	Aid Pending:	Yes

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 June 6, 2024, Commonwealth Care Alliance (CCA), a MassHealth Integrated Care Organization (ICO) and MassHealth's agent, denied the Appellant's level one appeal of a modification of a prior authorization request for personal care attendant (PCA) services. *See Exhibit 1.*¹ The Appellant filed this external appeal with the Board of Hearings in a timely manner on June 11, 2024. *See 130 CMR 610.015 and Exhibit 2.* Denial of a level one internal

¹ An Integrated Care Organization is defined at 130 CMR 501.001 as "an organization with a comprehensive network of medical, behavioral-health care, and long-term services and supports providers that integrates all components of care, either directly or through subcontracts, and has contracted with the Executive Office of Health and Human Services (EOHHS) and the Centers for Medicare & Medicaid Services (CMS) and been designated as an ICO to provide services to dual eligible individuals under M.G.L. c. 118E. ICOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services."

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 reduced the Appellant's allotted PCA service hours effective May 12, 2024.

Issue

Whether CCA was acting within its discretion in its decision to reduce the Appellant's allotted PCA service hours.

Summary of Evidence

All parties appeared telephonically. The Appellant verified her identity. The parties' testimony and record evidence are summarized as follows:

The Appellant is an adult between the ages of 21 to 64. The Appellant's medical history includes [REDACTED] a non-healing wound on her cervical neck and upper back, mixed incontinence, viral hepatitis C, retained orthopedic hardware, chronic post-traumatic stress disorder (PTSD), and Type 2 Diabetes. The appellant also reports that she has total paralysis of left arm and that she can only raise her right arm "half-way." Testimony, Exhibit 6. The prehearing submission from CCA states the following: "[the appellant] states she is unable to dress or provide herself with wound care to the chronic open weeping open wound to her neck/upper back...she requires multiple showers and clothing changes daily as...she cannot tolerate keeping a dressing on the wound...they can only keep her wound covered about 30 minutes." Testimony, Exhibit 6.

Ms. Horne began the CCA testimony. She testified that the current 4/1/2024 PCA evaluation requested 63 day and 14 night hours weekly, 77 total hours, through 6/30/2024. Testimony. Following CCA review of the evaluation, reductions in hours were recommended, and the appellant was approved for 48.75 day and 14 night hours weekly, 62.75 total hours, beginning 5/12/2024 and ending 11/5/2024. CCA records indicate that the appellant joined CCA on April 6, 2023, that this current evaluation was part of the appellant's annual review, and that CCA previously authorized 61.5 day and 14 night hours weekly due to continuation of care from 4/1/2023-6/30/2023.² Testimony. The records submitted by CCA stated that the appellant has not had any inpatient hospitalizations in the past 25 months, and her only recent documented hospital

² The MassHealth representative also testified that a calculation error by CCA was discovered during the appeal process and that the appellant was presently receiving 75.5 total hours per week in PCA services instead of the approved 62.75 total hours due to Aid Pending being applied in this appeal.

visit was an ER visit on 3/25/2024 due to vomiting; on that occasion, the appellant left without being seen as wait time was 7-9 hours. Exhibit 6.

Mr. Mancuso, testifying on behalf of MassHealth, stated that when the appellant joined CCA, she came to them with 61.5 day hours and 14 night hours per week. He stated that this was a result of a previous Board of Hearings appeal in June of 2022. He testified that this was the source of her existing hours, and that her hours of PCA services had remained the same until she had requested the increased hours. Mr. Mancuso stated there were three categories where CCA reduced the appellant's PCA service hours: Dressing/Undressing, Wound Care, and Transportation.

2024 PCA Reductions:

Dressing/Undressing

The appellant requested 20 minutes per episode of dressing, 4 times per day, 7 days per week (20x4x7), and this was modified by CCA to 20 minutes per episode, two times per day, 7 days per week (20x2x7). Testimony, Exhibit 6. The appellant requested 15 minutes per episode of undressing, 4 times per day, 7 days per week (15x4x7), and this was modified by CCA to 15 minutes per episode, two times per day, 7 days per week (15x2x7). The rationale for this modification was that the appellant also receives time for clothing changes during her Bladder/Bowel Care episodes, that she receives twice daily wound care, and that 2 episodes of dressing and undressing per day should be sufficient. Testimony.

The appellant responded that dressing was incredibly difficult for her, asserting that "normal people can get dressed, I can't." Testimony. She testified that her unhealing wound begins at the top of the back of her neck and that it extends down her back to the top of her "bra line." Testimony. It continues to grow and get bigger. Testimony. The appellant stated that there is a piece of hardware trapped inside of her spinal area and she cannot have it removed because her doctors have informed her that if removal is attempted, she will likely become a quadriplegic from the surgery. Testimony. She stated that when the wound is covered for an extended period of time, she begins to go into septic shock. The extra time is needed because the wound oozes and drains blood and other fluids constantly and she soils 4-5 shirts per day. Testimony. She also cannot lift her arms and cannot assist with dressing or undressing. Testimony. She stated that the odor from the wound makes it difficult for her to keep PCAs. Testimony.

Wound Care

The appellant requested 10 minutes per episode of wound care, 4 times per day, 7 days per week (10x4x7,) and this was modified by CCA to 10 minutes per episode, two times per day, 7 days per week (10x2x7). Testimony, Exhibit 6. The CCA representative testified that the rationale by CCA in making these reductions was that the appellant also has time for AM and PM showers, which can include wiping her neck drainage if necessary. Since the wound care tasks are covered multiple

times per day, the modification is necessary because there is duplication in the tasks.

Evidence submitted by CCA documents the appellant's need for constant wound care. From CCA's notes:

[The appellant] states her left arm is 100% paralyzed and her right arm can only be lifted half way. Due to this and the extensive non-healing wound on her back, she is unable to do basic tasks like changing her clothes/ getting to the bathroom, changing her depends, and general wound care at any point on her own. This wound extends from the top of neck down to bra strap, width spanning from left shoulder blade to right shoulder blade. Providers cannot close this wound since it is currently infected, it has been opened and closed 3 times prior and each of the 3 times it has gone septic. Therefore the wound needs to remain opened, the hardware that is inside is infected but [the appellant] cannot have this hardware removed, as best case scenario she would end up quadriplegic. As an example [the appellant] states that she woke up the other night soaked in blood, says "you would have thought someone got murdered in my bed" there was so much blood and pain intensity. The wound constantly drains & bleeds, and smelling terrible to the point where they need to shower her. They can only keep her wound covered about 30 minutes, if it goes on for longer then she starts to shake and sweat and go into a confused shock state. Her clothing gets changed several times a day due to the wound bleeding through. Member states that she has a neurogenic bladder, can't get up to go to the bathroom on her own - needs assistance getting to the bathroom or changing her depends since she is incredibly limited in her mobility from partial paralysis and the wound which gets further irritated and bloody by the extra movements, as can be imagined.

(Exhibit 6)

The appellant also submitted a letter from her primary care physician that stated the following in regard to her non-healing wound:

[The Appellant] requires an extension of PCA hours to care for her wound. She has a large chronic non-healing wound over her spine in her upper back. She has been treated by numerous wound clinics without success. The wound is continuously draining which soils her clothing. She needs assistance irrigating the wound in the shower and changing her shirt four times daily due to the continuously weeping

wound.

(Exhibit 7)

Transportation

The appellant requested 82 units of travel time per year, and this was modified by CCA to 80 units of travel time per year. Testimony, Exhibit 6 at page 60. The CCA representative testified that mathematical errors on the transportation worksheet caused the modification in the time for transportation. Furthermore, during the PCA re-evaluation process, the clinical reviewer reached out to several of the appellant's providers and discovered that several of the providers listed on the transportation worksheet provided by the appellant had not seen her in years, and that she had never been an enrolled patient at the Tufts Infectious Disease clinic. The CCA representative further testified that CCA was able to verify in the past year that the appellant has only had visits with psychiatry or her licensed clinical social worker 25 times, ophthalmology one time (not six times as reported by the appellant), endocrinology two times, and her primary care provider nine times.

The appellant explained that she was in the process of changing a lot of her providers. She closed her testimony by stating "all of her days are horrible," she has "no peace, only suffering." Testimony.

Findings of Fact

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

1. The Appellant is an adult between the ages of 21 to 64. Exhibit 4.
2. The Appellant's medical history includes [REDACTED] a non-healing wound on her cervical neck and upper back, mixed incontinence, viral hepatitis C, retained orthopedic hardware, chronic PTSD, Type 2 Diabetes, and arm paralysis. Testimony and Exhibit 6.
3. In April 2023, the Appellant enrolled with CCA for PCA services and was authorized for 61.5 day and 14 night hours weekly. Testimony, Exhibit 6.
4. On April 1, 2024, the Appellant was re-evaluated for PCA services and requested 63 day and 14 night hours weekly, 77 total hours. Testimony, Exhibit 6.
5. CCA modified the PCA time to allow 48.75 day and 14 night hours weekly, 62.75 total hours, beginning 5/12/2024 and ending 11/5/2024. Testimony, Exhibit 5.

6. CCA's modifications occurred in three categories of activities of daily living: Dressing/Undressing, Wound Care, and Transportation. Testimony, Exhibit 6:
 - a. Dressing was reduced from 560 minutes to 280 minutes per week and Undressing was reduced from 420 minutes to 210 minutes per week.
 - b. Wound Care was reduced from 280 minutes to 140 minutes per week.
 - c. Transportation was reduced from 82 units per year to 80 units per year.

Analysis and Conclusions of Law

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

(D) Integrated Care Organizations (ICO). Also referred to as "One Care plans." Members enrolled in an ICO (One Care plan) are participants in the Duals Demonstration, also known as "One Care." MassHealth members who are 21 through 64 years of age at time of enrollment may enroll in an ICO pursuant to 130 CMR 508.007(A).

(130 CMR 508.001(D))

Next, pursuant to MassHealth regulation 130 CMR 508.007(C):

Obtaining Services When Enrolled in an ICO. When a member is enrolled in an ICO in accordance with the requirements under 130 CMR 508.007(A), the ICO 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).

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 ICOs, 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).

CCA's modifications occurred in three categories of activities of daily living: Dressing/Undressing, Wound Care, and Transportation.

Here, the appellant credibly testified and provided evidence on the record that supports her complicated and unique health situation. Based upon the testimony and documentary evidence, there is no doubt that the appellant needs wound care and dressing/undressing assistance that is outside the normal standard of care. Her complex medical situation demonstrates that the regulations are not always able to contemplate a chronically non-healing surgical wound and the medical necessity that arises from it³. Therefore, the appellant has met her burden to show the invalidity, in part, of CCA's determination. The Appellant's testimony provides a preponderance of evidence that the Appellant requires additional time for Dressing/Undressing and Wound Care beyond the time allotted by CCA. However, the appellant's testimony does not support, by a preponderance of evidence the total time requested by the appellant for her transportation needs. If she does need additional transportation time once she is enrolled with her new specialists and providers, she may request a re-evaluation of her transportation needs at that time.

Therefore, regarding Dressing/Undressing and Wound Care, the appeal is approved, inasmuch as CCA shall allot 560 minutes per week for Dressing (20x4x7), CCA shall allot 420 minutes per week for Undressing (15x4x7), and CCA shall allot 280 minutes per week for Wound Care. Regarding the modifications made to Transportation, this appeal is denied. In conclusion, the Appellant's appeal is approved in part and denied in part.

Order for MassHealth

Remove Aid Pending.

Regarding the modifications subject to the notice dated June 6, 2024, CCA shall implement the following allotments, for the period of 5/12/2024 and ending 11/5/2024:

- 1) Dressing/undressing: 980 minutes per week shall be allotted by CCA to the Appellant.
- 2) Wound Care: 280 minutes per week shall be allotted by CCA to the Appellant.

³ In CCA's prehearing submission, their own Medical Necessity Guide form states: "This MNG guide is not a rigid rule. CCA has the mission to address all of our complicated members' health needs...CCA encourages our clinicians to clearly document our members' unique health contexts when requesting care which does not meet this formal MNG's conditions and recommendations." Exhibit 6 at page 47.

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.

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

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