

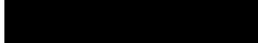
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part; Approved in part	Appeal Number:	2412287
Decision Date:	12/30/2024	Hearing Date:	10/18/2024
Hearing Officer:	Thomas Doyle	Record Open to:	11/8/24

Appearance for Appellant:



Appearance for Respondent:

Cassandra Horne, Appeals Manager
Amy Desilets, R.N.
Kaley Emery, RN, Appeals Supervisor
(Observing)
Michelle Shepard, SCO Appeals Manager
(Observing)



*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; Denied in part; Approved in part	Issue:	Prior Authorization – PCA Services
Decision Date:	12/30/2024	Hearing Date:	10/18/2024 ¹
Respondent's Rep.:	Cassandra Horne Amy Desilets	Appellant's Rep.:	
Hearing Location:	Remote (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 July 12, 2024, Commonwealth Care Alliance (CCA), a senior care organization (SCO) which contracts with MassHealth, notified appellant that it had denied her Level 1 Appeal regarding her request for personal care attendant (PCA) services. (Ex. 1). Appellant filed a timely appeal with the Board of Hearings (BOH). (Ex. 2; 130 CMR 610.015(B)).² The modification of a request for services is a valid basis for appeal (130 CMR 610.032).

¹ The appeal hearing initially convened on September 13, 2024, but an oral motion to continue by counsel for appellant was granted.

² Appellant argued since her Fair Hearing Request Form was dated July 31, 2024, aid pending should have been granted. The record was left open for CCA to confer with BOH about the receipt of appellant's Fair Hearing Request Form. (Ex. 9). No response was received from CCA. Regarding time limitations on the right of appeal, the date of request for a fair hearing is the date on which BOH receives such a request in writing. 130 CMR 610.015 (B). At the top of appellants Fair Hearing Request Form it is indicated the form was faxed to BOH from Staples on August 8, 2024. To receive aid pending, a member must request a hearing within 10 days from the date they receive notice of the action. (Eligibility Operations Memo 23-05, February 2023; See also 130 CMR 610.036). The notice of action is dated July 12, 2024. (Ex. 1). BOH did not receive the request for hearing until August 8, 2024. (Ex. 2). Appellant is not eligible for aid pending.

Action Taken by Respondent

CCA denied appellant's level one internal appeal of modification of a request for PCA services.

Issue

Did CCA correctly deny appellant's level one internal appeal of a modification of a request for PCA services?

Summary of Evidence

Representatives from CCA appeared via telephone and offered the following factual background through testimony and documentary evidence: Appellant is a MassHealth member over 65 who is enrolled in CCA, a SCO that contracts with MassHealth. The appellant has the following diagnoses: multiple sclerosis, bed/wheelchair bound, history of neurogenic bladder and recurrent infections with bilateral nephrostomy tubes, history of sacral and lower extremity pressure ulcers, and utilization of supplemental O2 via nasal cannula. (Ex. 4, p. 1). Appellant has been a member of CCA since June 1, 2023, and when appellant came to CCA she had 71.75 hours of PCA services via a continuation of care. A CCA representative stated when a person comes to CCA with a continuation of care, normally they will receive an initial assessment. Appellant's initial CCA assessment was conducted in person at appellant's home by a registered nurse on May 30, 2024. (Testimony; Ex. 4, pp. 108-134).³ After the May 2024 assessment, appellant's PCA time was reduced to 49.75 hours per week. (Testimony). Appellant was notified of this decision by letter dated June 13, 2024. (Testimony; Ex. 4, p. 52). CCA received a Level 1 appeal request from appellant on June 15, 2024. (Testimony). The Level 1 appeal was denied on July 11, 2024, after review by a CCA Medical Director. (Ex. 4, p. 201). CCA notified appellant of the denial of their Level 1 appeal by notice dated July 12, 2024. (Testimony; Ex. 1; Ex. 4, p. 203).

CCA stated that there were multiple areas that had time reduced, including, Mobility, Passive Range of Motion (PROM), Bathing (Hair washing), Grooming, (lotion application), Bladder care, Bowel care, Medications and Night hours. (Ex. 4, p. 2). The parties came to agreement on multiple tasks. The parties agreed on 280 minutes a week for PROM. (Testimony). CCA agreed to restore Hair Washing at 45 minutes a week. (Testimony). Regarding Oral Care, CCA agreed to restore the time requested by appellant at 2 minutes an episode, 2 episodes a day, 7 days a week. (Testimony). Appellant agreed to the reduction of time for Bladder Care at 350 minutes a week. (Testimony). Regarding Bowel Care, the parties agreed to 25 minutes an episode, 3 episodes a

³ Documentation provided by CCA indicates there was an assessment of appellant conducted by telephone on April 24, 2023. (Ex. 4, p. 3).

day, 7 days a week. (Testimony). Under Medications, the parties agreed to 3 minutes an episode, 3 episodes a day, 7 days a week for oral medications and 5 minutes an episode, 2 episodes a day, 7 days a week for the nebulizer. (Testimony). Regarding Night Hours, CCA agreed to restore 14 hours a week. (Testimony).

In two areas, Mobility Transfers and Grooming, lotion application, appellant requested an increase in time. Regarding Mobility Transfers, CCA modified the total time for this task to 10 minutes an episode, 2 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 110). CCA stated they reduced this time because appellant reported she only transfers out of bed 1 time a week for doctor's appointments whereas previously appellant stated she was getting up daily with her wheelchair. (Testimony; Ex. 4, p. 110). Appellant requested an increase in time for Mobility Transfers from 10 minutes an episode to 20 minutes an episode and from 1 day a week to 3 days a week to transfer appellant in and out of bed with a Hoyer lift because appellant transferred out of bed more than 1 time a week, in contrast to what was written in the CCA assessment. (Ex. 4, p. 110). Appellant submitted an affidavit from her PCA in support of her arguments. (Ex. 8).

Regarding application of lotion, CCA stated appellant received 5 minutes an episode, 1 episode a day, 7 days a week in the 2023 appellant assessment and was given the same amount of time under the 2024 adjustment assessment. (Testimony; Ex. 4, pp. 3, 114). Appellant requested an increase in time to 10 minutes an episode, appellant counsel stating 5 minutes was not enough time to apply lotion to appellant's entire body and appellant's PCA writing applying lotion took 10 minutes a day. (Testimony; Ex. 8). CCA stated they would place a request for an increase in time on behalf of appellant. (Testimony).

Findings of Fact

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

1. Appellant is a MassHealth member over 65 who is enrolled in CCA. (Testimony; Ex. 6).
2. Appellant has the following diagnoses: multiple sclerosis, bed/wheelchair bound, history of neurogenic bladder and recurrent infections with bilateral nephrostomy tubes, history of sacral and lower extremity pressure ulcers, and utilization of supplemental O2 via nasal cannula. (Ex. 4, p. 1).
3. Appellant has been a member of CCA since June 1, 2023 and had 71.75 hours of PCA services upon enrollment via a continuation of care. (Testimony).
4. Appellant's initial assessment for CCA was conducted in person at appellant's home by a registered nurse on May 30, 2024, and subsequently appellant's PCA time was reduced to 49.75 hours per week. (Testimony; Ex. 4, pp. 108-134).

5. Appellant was notified by letter of the decision to reduce her time on dated June 13, 2024. (Testimony; Ex. 4, p. 52).
6. CCA received a Level 1 appeal request from appellant on Jun 15, 2024. (Testimony). The Level 1 appeal was denied on July 11, 2024 after review by a CCA Medical Director. (Ex. 4, p. 201). CCA notified appellant of their denial of the Level 1 appeal by notice dated July 12, 2024. (Testimony; Ex. 1; Ex. 4, p. 203).
7. At hearing, the parties agreed to the following time for tasks of the appellant's PCA services:

280 minutes a week for PROM. (Testimony); Hair Washing at 45 minutes a week. (Testimony); Oral Care at 2 minutes an episode, 2 episodes a day, 7 days a week. (Testimony); Bladder Care at 350 minutes a week. (Testimony); Bowel Care at 25 minutes an episode, 3 episodes a day, 7 days a week. (Testimony); Under Medications, the parties agreed to 3 minutes an episode, 3 episodes a day, 7 days a week for oral medications and 5 minutes an episode, 2 episodes a day, 7 days a week for the nebulizer. (Testimony); Regarding Night Hours, CCA agreed to restore 14 hours a week. (Testimony).
8. CCA gave time for 10 minutes an episode, 2 episodes a day, 7 days a week for Mobility Transfers and Grooming, Lotion application, remained the same at 5 minutes a day.
9. For Mobility Transfers and Grooming, lotion application, appellant requested an increase in time. Appellant requested 20 minutes an episode and 3 days a week⁴ for Mobility Transfers and 10 minutes a day for lotion application. (Testimony).
10. Appellant is bedbound. (Ex. 4, p. 1).

Analysis and Conclusions of Law

Under 130 CMR 508.006, MassHealth members who are enrolled in senior care organizations 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(A);

(B) a determination by the MassHealth behavioral-health contractor, by one of the MassHealth managed care organization (MCO) contractors, or by a senior care organization (SCO), as further described in 130 CMR 610.032(B), if the

⁴ Appellant did not dispute 2 episodes a day.

member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's denial of a request for an out-of-area MassHealth managed care provider under 130 CMR 508.002(F); or

(D) the MassHealth agency's disenrollment of a member from a MassHealth managed care provider under 130 CMR 508.002(G).

The Fair Hearing regulations at 130 CMR 610.032(B) describe in greater detail the bases for appeal:

(B) Members enrolled in a managed care contractor have a right to request a fair hearing for any of the following actions or inactions by the managed care contractor, provided the member has exhausted all remedies available through the managed care contractor's internal appeals process (except where a member is notified by the managed care contractor that exhaustion is unnecessary):

(1) failure to provide services in a timely manner, as defined in the information on access standards provided to members enrolled with the managed care contractor;

(2) a decision to deny or provide limited authorization of a requested service, including the type or level of service;

(3) a decision to reduce, suspend, or terminate a previous authorization for a service;

(4) a denial, in whole or in part, of payment for a service where coverage of the requested service is at issue, provided that procedural denials for services do not constitute appealable actions. Notwithstanding the foregoing, members have the right to request a fair hearing where there is a factual dispute over whether a procedural error occurred. Procedural denials include, but are not limited to, denials based on the following: (a) failure to follow prior-authorization procedures; (b) failure to follow referral rules; and (c) failure to file a timely claim;

(5) failure to act within the time frames for resolution of an internal appeal as described in 130 CMR 508.010;

(6) a decision by an MCO to deny a request by a member who resides in a rural service area served by only one MCO to exercise his or her right to obtain

services outside the MCO's network under the following circumstances, pursuant to 42 CFR 438.52(b)(2)(ii):

(a) the member is unable to obtain the same service or to access a provider with the same type of training, experience, and specialization within the MCO's network;

(b) the provider from whom the member seeks service is the main source of service to the member, except that member will have no right to obtain services from a provider outside the MCO's network if the MCO gave the provider the opportunity to participate in the MCO's network under the same requirements for participation applicable to other providers and the provider chose not to join the network or did not meet the necessary requirements to join the network;

(c) the only provider available to the member in the MCO's network does not, because of moral or religious objections, provide the service the member seeks; and

(d) the member's primary care provider or other provider determines that the member needs related services and that the member would be subjected to unnecessary risk if he or she received those services separately and not all of the related services are available within the MCO's network; or

(7) failure to act within the time frames for making service authorization decisions, as described in the information on service authorization decisions provided to members enrolled with the managed care contractor.

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with ADLs and IADLs, 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 or a nurse practitioner who is responsible for the oversight of the member's health care; (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 personal care agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

- (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.

(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 personal care services; and

(c) other special needs approved by MassHealth as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered "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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

Mobility Transfer:

Appellant has demonstrated additional time is warranted for PCA assistance with this task, but not to the extent requested. CCA gave time for this at 10 minutes an episode, 2 times a day, 1 day a week and stated this was because appellant stated at the assessment she only went to a doctor's

appointment. However, appellant offered credible evidence that the PCA requires more time to transfer appellant in and out of bed, with a Hoyer lift. Appellant's PCA averred it takes "about" 20 minutes to get appellant out of, and back into bed with a Hoyer lift. (Ex. 8). The PCA is not sure the exact amount of time it takes but is sure it is more than 10 minutes an episode. Regarding the number of days a week, CCA only gave time for 1 day a week. However, appellant's PCA again averred appellant goes out an "average" 3 times a week, "1 time for a weekly wound care appointment and irregularly for other medical appointments, nail salon visit once a month and social visits." (Ex. 8). Thus, the appellant has demonstrated that additional time is necessary, as follows for Mobility Transfers: 15 minutes an episode, 2 episodes a day, 2 days a week. This balances the PCA's averments that it takes more than 10 minutes to transfer appellant and that appellant on average leaves her home more than 1 time a week. It also aligns with the Time for Tasks Guidelines. (Ex. 4, p. 63). This portion of the appeal is APPROVED IN PART.

Lotion application:

The appellant has not demonstrated that additional time is warranted for PCA assistance with this task. CCA authorized time for assistance with this task at 5 minutes an episode, 1 episode a day, 7 days a week. Appellant requested the time be increased to 10 minutes an episode. However, at hearing, the only evidence offered was testimony by counsel for appellant in which she stated that 5 minutes was insufficient. Additional evidence to support 10 minutes was offered in the form of an affidavit from the PCA. (Ex. 8). However, the PCA only writes "Apply lotion (10 minutes daily)." I find the evidence offered to support 10 minutes a day is insufficient. It lacks specificity and any explanation as to why 5 minutes is insufficient, especially where appellant reported she is bedbound. (Ex. 4, p. 1). As appellant has not met her burden for this task, this part of the appeal is DENIED.

Order for CCA

Implement agreements made at hearing (agreed time for PCA assistance with Prom, Hair Washing, Oreal Care; Bladder Care; Bowel Care Medications and Night Hours). Authorize additional PCA time in accordance with this decision (increased time for PCA assistance with Mobility Transfers).

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 CCA. 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.

Thomas Doyle
Hearing Officer
Board of Hearings

CC: [REDACTED]

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