

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part	Appeal Number:	2412978
Decision Date:	11/27/2024	Hearing Date:	10/11/2024
Hearing Officer:	Emily Sabo		

Appearance for Appellant:

Pro se

Appearances for Commonwealth Care Alliance:

Cassandra Horne, Appeals & Grievances
Manager; Kim Galindo



*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; Dismissed in part	Issue:	Managed Care Organization—Denial of Internal Appeal; Prior Authorization; Personal Care Attendant (PCA) Services
Decision Date:	11/27/2024	Hearing Date:	10/11/2024
CCA's Reps.:	Cassandra Horne; Kim Galindo	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South (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 August 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. Exhibit 1.¹ The Appellant filed this external appeal with the Board of Hearings in a timely manner on August 20, 2024. 130 CMR 610.015 and Exhibit 2. Denial of a level one internal appeal

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."

by a managed care organization is a valid ground for appeal to the Board of Hearings. 130 CMR 610.032(B).

Action Taken by Commonwealth Care Alliance

CCA reduced the Appellant's allotted PCA service hours effective August 22, 2024.

Issue

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

Summary of Evidence

The hearing was held by telephone. 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 primary diagnosis is cerebral palsy, and she wears leg braces. The Appellant was assessed on April 26, 2023, and the assessment requested 33.75 hours per week for PCA services. Exhibit 5 at 114. The CCA representative testified that CCA modified this request to 28.25 hours per week for PCA services in 2023.

On May 22, 2024, the [REDACTED] assessed the Appellant and submitted a request for 27.75 hours per week. CCA modified the request to 19.75 hours per week.² The CCA representative explained that the Appellant's PCA time was reduced in two categories: passive range of motion (PROM) from 560 minutes/week³ to zero, and medical transportation from 55 minutes/week to zero.⁴

The CCA representative testified that the Appellant's PCA time for medical transportation was reduced because the Appellant was no longer going to weekly medical appointments. The Appellant agreed that she was not receiving injections on a weekly basis any longer, and that she

² The CCA representatives did not specify the end date of the current complement of PCA hours. Typically, MassHealth reviews for medical necessity occur at least annually, or when a significant change in a member's health occurs.

³ The requested time was just for the Appellant's lower extremities. Exhibit 5 at 58.

⁴ As the hours provided by CCA did not add up correctly (it totals 30 hours), the hearing officer asked the CCA representative about it at hearing. The CCA representative did not have an explanation. Accordingly, the decision relies on the time CCA stated it approved (19.75 hours) and the categories it states were modified (9.33 hours for PROM and 0.92 hours for medical transportation).

accepted the reduction from 55 minutes to zero for medical transportation.

The CCA representative testified that PROM exercises are for people who are paralyzed, and that because the Appellant is independently mobile, there is no need for PCA hours for this task. The CCA representative testified that because the Appellant can perform active ranges of motion, she does not need assistance with PROM. In 2023, the Appellant's assessment requested 840 minutes per week for PROM, and CCA modified it to 560 minutes per week. *See also* Exhibit 5 at 111, 116.

The [REDACTED] assessment requested 20 minutes twice daily, seven days a week for the lower left extremity and 20 minutes twice daily, seven days a week for the lower right extremity, for a total of 560 minutes per week. *Id.* at 58. The assessment stated that the Appellant needs a "moderate" level of assistance with PROM. *Id.* The Appellant submitted a letter from her doctor's office, dated [REDACTED] 2024, stating that "Due to her chronic condition, [the Appellant] ambulates with a spastic diplegic gait. She requires 1 hour per weekday of physical therapy, and she wears AFOs and ambulates with a cane." Exhibit 2 at 3. The Appellant testified she does need PCA help with PROM. The Appellant testified that her PCA helps her with basic stretching of her legs to allow them to move to a 45-degree angle. The Appellant testified that she is unable to move her limbs to ninety-degree angles. The Appellant also explained that the "AFOs" in the letter referred to her leg braces, or ankle-foot orthotics. The Appellant testified that she can ambulate but that she needs the PCA's assistance.

CCA included the Time-For-Tasks Guidelines for the MassHealth PCA Program in their submission.⁵ The Time-For-Tasks Guidelines for the MassHealth PCA Program provides the following:

Levels of Physical Assistance	
Level	Description
Independent	Member requires 0% physical assistance to complete task
Minimal Assist	Member requires up to 25% physical assistance to complete task
Moderate Assist	Member performed part of activity but requires up to 50% physical assistance to complete task
Maximum Assist	Member involved and requires up to 75% physical

⁵ CCA also submitted its Member Handbook which states that with prior authorization, PCA services are covered by the plan. The Handbook states that PCA services "also include Personal Assistance Services, such as cueing and monitoring. . . . A worker can help you with hands-on tasks. The plan may also pay for a worker to help you, even if you do not need hands-on help." Exhibit 6 at 91.

	assistance to complete task
Total Dependence	Member requires full performance (100%) of activity by another

Exhibit 5 at 45.

The Time-For-Tasks Guidelines for PROM are:

- Upper extremities
 - Average range 10-30 minutes
- Lower extremities
 - Average range 10-30 minutes

Id. at 40.

The Time-For-Tasks Guidelines for PROM describe it as “movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move; or to alleviate pain or reduce severe spasms/cramping.” *Id.*

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 primary diagnosis is cerebral palsy, and she wears leg braces. Testimony and Exhibit 5.
3. On April 26, 2023, the Appellant was assessed for PCA services and requested 33.75 hours per week. CCA modified the request to 28.25 hours per week. Testimony and Exhibit 5.
4. On May 22, 2024, the [REDACTED] conducted an assessment and requested 27.75 hours/week of PCA assistance per week on behalf of the Appellant. Testimony and Exhibit 5.
5. CCA modified the request to allow for 19.75 hours per week for PCA services. Testimony and Exhibit 5.
6. CCA modified the categories of PROM and medical transportation. Testimony and Exhibit 5.
7. The appellant filed a level one internal appeal of this denial with CCA, which was denied.

8. The Appellant timely appealed CCA's decision to the Board of Hearings on August 20, 2024.
9. At the hearing, the Appellant agreed to CCA's modification of the time for medical transportation. Testimony.
10. The [REDACTED] assessment requested 20 minutes twice daily, seven days a week for the lower left extremity and 20 minutes twice daily, seven days a week for the lower right extremity, for a total of 560 minutes per week. The assessment stated that the Appellant required a "moderate" level of assistance. Exhibit 5.
11. CCA modified the time for PROM from 560 minutes per week to zero. Testimony and Exhibits 1 & 5.
12. On [REDACTED] 2024, the Appellant's doctor's office wrote a letter indicating that the Appellant had a spastic diplegic gait and required one hour of physical therapy each weekday. Exhibit 2.
13. The Time-For-Tasks Guidelines for the MassHealth PCA Program provides the following:

Levels of Physical Assistance	
Level	Description
Independent	Member requires 0% physical assistance to complete task
Minimal Assist	Member requires up to 25% physical assistance to complete task
Moderate Assist	Member performed part of activity but requires up to 50% physical assistance to complete task
Maximum Assist	Member involved and requires up to 75% physical assistance to complete task
Total Dependence	Member requires full performance (100%) of activity by another

Exhibit 5 at 45.

14. The Time-For-Tasks Guidelines for PROM are:

- Upper extremities
 - Average range 10-30 minutes

- Lower extremities
 - Average range 10-30 minutes

Exhibit 5 at 40.

15. The Time-For-Tasks Guidelines for PROM describe it as “movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move; or to alleviate pain or reduce severe spasms/cramping.” Exhibit 5 at 40.
16. The Appellant’s PCA assists her with maintaining and improving the ability of her lower extremities to move. Testimony.

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), (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).

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 one category of activities of daily living: PROM and one category of instrumental activities of daily living: Medical Transportation.

Because at hearing, the Appellant agreed with CCA’s modification of the time for medical transportation, that part of the appeal is DISMISSED. *See* 130 CMR 610.035(A)(8).

Turning to PROM, the [REDACTED] assessment requested 20 minutes, twice daily, 7 days a week for the lower left extremity and 20 minutes, twice daily, 7 days a week for the lower right extremity for a total of 560 minutes weekly. The assessment indicated that the Appellant needed a “moderate” level of assistance. CCA modified the request to zero minutes weekly on the basis that the Appellant is mobile and can perform active ranges of motion.

The Appellant’s doctor’s office stated that due “to her chronic condition, [the Appellant] ambulates with a spastic diplegic gait. She requires 1 hour per weekday of physical therapy, and she wears AFOs and ambulates with a cane.” Exhibit 2 at 3. The Appellant testified that she needs her PCA’s help to stretch her legs to allow them to move to a 45-degree angle.

The Time-For-Tasks Guidelines for passive range of motion exercises are:

- Upper extremities
 - Average range 10-30 minutes
- Lower extremities
 - Average range 10-30 minutes

Exhibit 5 at 40.

After reviewing the evidence including the MassHealth Time-For-Tasks Guidelines, I find that the Appellant has met her burden to show the invalidity of CCA's determination based on her testimony, that her doctor's office indicated that it was medically necessary, and the MassHealth Time-For-Tasks Guidelines. However, I do modify the request from 20 minutes to 15 minutes, to reflect that the level of assistance required is moderate, and from 7 days to 5 days a week, in accordance with the letter from the Appellant's doctor's office. Accordingly, regarding PROM, the appeal is APPROVED IN PART.

In conclusion, the Appellant's appeal is approved in part regarding PROM, and dismissed in part regarding medical transportation.

Order for MassHealth

End Aid Pending. Regarding the modifications subject to the notice dated August 6, 2024, CCA shall implement the following allotment for PROM: 300 minutes per week shall be allotted by CCA to the Appellant.

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.

Emily Sabo
Hearing Officer
Board of Hearings

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