

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2416301
<b>Decision Date:</b>	01/16/2025	<b>Hearing Date:</b>	11/26/2024
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Commonwealth Care Alliance – Cassandra  
Horne, Jeremiah Mancuso, RN and Kaley  
Emery



*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>	Home Health Aide Services
<b>Decision Date:</b>	01/16/2025	<b>Hearing Date:</b>	11/26/2024
<b>MassHealth's Rep.:</b>	Cassandra Horne CCA	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Quincy	<b>Aid Pending:</b>	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 September 28, 2024, MassHealth's agent, Commonwealth Care Alliance (CCA) approved in part and denied in part Appellant's Level-One internal appeal of CCA's earlier denial of all home health aide (HHA) services (Exhibit A). Appellant filed for this appeal in a timely manner on October 23, 2024 and was granted AID PENDING status forestalling a change in HHA hours until resolution of this appeal (see 130 CMR 610.015(B) and Exhibit B). A partial denial of assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth's agent, Commonwealth Care Alliance (CCA) approved in part and denied in part Appellant's Level-One internal appeal of CCA's earlier denial of all HHA services.

### Issue

The appeal issue is whether CCA properly applied the controlling regulation(s) to accurate facts when it approved in part and denied in part Appellant's Level-One internal appeal of CCA's earlier denial of all HHA services.

## Summary of Evidence

Both parties appeared by telephone. Prior to hearing CCA submitted a packet of documents (collectively, Exhibit B).

The CCA representatives testified that Appellant is enrolled in the CCA SCO Program and began receiving HHA services in late 2023 at a rate of 24 hours per day, seven days per week. Appellant resides alone in the community in an apartment and qualifies for skilled nursing facility level of care. Appellant is bedbound and dependent for all her care.

On August 29, 2024, CCA informed Appellant that her HHA services would be terminated on September 9, 2024. On September 5, 2024, Appellant filed an internal Level-One appeal with CCA. An independent review of the determination to terminate HHA Services reversed the total denial and issued a partial approval granting Appellant 14 hours per day, seven days a week, but denied the full request of 24 hours per day, seven days per week. This decision was communicated to Appellant through written notice dated September 28<sup>th</sup> 2024 which Appellant appealed to the Board of Hearings (Exhibit A).

According to the CCA representatives, the partial approval was based on an in-person assessment performed on September 6, 2024 by a CCA registered nurse who assessed Appellant's functional capacity and needs and applied a "time for task tool" to reach the 98 hours per week that were ultimately approved. The nurse also found that Appellant meets the medical necessity requirement for HHA services as outlined by MassHealth regulations at 130 CMR 403.000. CCA noted that according to MassHealth regulations, after the first 60 days of receiving HHA services, the need must be reassessed using the time for task tool (Exhibit B, page 54). CCA also applied MassHealth regulations which involve limitations to HHA services, particularly those citing non-covered or non-compensable services which include services meant to respond to anticipatory or unpredictable needs such as incontinence as well as assistance involving supervision or cueing. The CCA representatives explained that pursuant to MassHealth regulations, HHA services relative to activities of daily living are compensable only for direct care. Lastly, the CCA representatives noted that pursuant to MassHealth regulation 130 CMR 403.424, HHA services are meant to be intermittent or part-time only and cannot be allowed on a full-time basis.

Appellant appeared on her own behalf accompanied by a physician who serves as the alternate administrator for the healthcare agency providing Appellant's HHA services. The physician testified that Appellant has two wounds on her rectum, and she often suffers from diarrhea. According to the physician, it is not medically appropriate for Appellant to be sitting in her own feces for an extended periods of time which can happen during the ten hours when HHA services are not in the home. The physician testified that without 24-hour HHA care, he would expect that Appellant's condition would worsen.

The physician noted that Appellant is sometimes transferred from her bed to a wheelchair and that this cannot be accomplished if the 24-hour per day level of assistance is not in place. He explained that a Hoyer lift has been ordered, but it has been on back order for several months and once the Hoyer lift is in place, then 24-hour care would not be needed to facilitate bed-to-chair transfers.

Appellant testified that because she lives alone and is totally dependent for all her care, she is very anxious and concerned when she's left alone for a lengthy period. Appellant described one incident where she nearly fell out of her bed when no one was home. The need for full bed rails was discussed.

The physician supported Appellant's testimony noting that her increased level of anxiety of being left alone is detrimental to her health. The physician also testified that because of her wounds, Appellant needs to be moved from side to side a minimum of every two hours and this cannot be done during the 10-hour period where no HHA services are in the home.

## **Findings of Fact**

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant is enrolled in the CCA SCO Program and began receiving HHA services in late 2023 at a rate of 24 hours per day, seven days per week.
2. Appellant resides alone in the community in an apartment and qualifies for skilled nursing facility level of care.
3. Appellant is bedbound and dependent for all her care.
4. On August 29, 2024, CCA informed Appellant that her HHA services would be terminated on September 9 2024.
5. On September 5, 2024, Appellant filed an internal Level-One appeal with CCA.
6. At the Level-One appeal, a CCA independent review of the determination to terminate HHA Services reversed the total denial and resulted in a partial approval granting Appellant 14 hours per day, seven days a week, but denied the full request of 24 hours per day, seven days per week.
7. CCA's partial approval was based on an in-person assessment performed on September 6, 2024, by a CCA registered nurse who assessed Appellant's functional capacity and needs and applied a "time for task tool" to reach the 98 hours per week that were

ultimately approved.

8. The reviewing nurse determined that Appellant meets the medical necessity requirement for HHA services as outlined by MassHealth regulations at 130 CMR 403.000.
9. Appellant has two wounds on her rectum and she often suffers with diarrhea.
10. It is not medically appropriate for Appellant to be sitting in her own feces for an extended period which can happen during the ten hours when HHA services are not in the home.
11. Appellant is very anxious and concerned when she's left alone for a lengthy period.
12. Because of her wounds, Appellant needs to be moved from side to side a minimum of every two hours and this cannot be done during the 10-hour period when no HHA services are in the home.

## **Analysis and Conclusions of Law**

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). On this record, Appellant has failed to meet her burden.

Appellant did not dispute the actual calculation of the 98 hours per week that CCA allowed at the Level-One appeal. Appellant did not dispute CCA's use of the time for task tool. Appellant has simply argued that she needs 24/7 HHA services. Factually, given the physician's testimony, Appellant has established that being left alone for a full ten-hour period is not medically advisable given her wounds, incontinence and repositioning needs. Nevertheless, pursuant to regulation 130 CMR 403.424(A) HHA services are provided only on an intermittent or part-time basis; therefore, Appellant's request for 24/7 HHA services is simply not allowable.

What Appellant and her HHA agency representative have shown on this record is that HHA services in general (or as provided by this particular HHA agency by the way it assigns segments of time) are not suitable for meeting all of Appellant's care needs in the community. Appellant has failed to show that CCA's determination to allow 14 hours per day of the requested 24 hours per day of HHA services is based on an error of fact and/or law.

For the foregoing reasons, the appeal is DENIED.

## **Order for MassHealth**

Remove AID PENDING and reduce HHA services to 14 hours per day, seven days per week.

## **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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

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