

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Approved in part; Denied in part	<b>Appeal Number:</b>	2416463
<b>Decision Date:</b>	1/3/2025	<b>Hearing Date:</b>	12/04/2024
<b>Hearing Officer:</b>	Sharon Dehmand		

**Appearance for Appellant:**




**Appearance for MassHealth:**

Cassandra Horne, Appeals and Grievances  
Manager;  
Jeremiah Mancuso, Clinical RN appeals and  
Grievances Manager;  
Amy Stebbins, Utilization Manager



*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>	Dismissed in part; Approved in part; Denied in part	<b>Issue:</b>	Managed Care Organization – Denial of Internal Appeal
<b>Decision Date:</b>	1/3/2025	<b>Hearing Date:</b>	12/04/2024
<b>MassHealth's Rep.:</b>	Cassandra Horne; Jeremiah Mancuso; Amy Stebbins	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South 2	<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 notice dated September 24, 2024, Commonwealth Care Alliance (CCA), an integrated Care Organization (ICO), denied the appellant's Level 1 appeal, partially approving the appellant's request for personal care attendant (PCA) service hours. See 130 CMR 508.004(B) and Exhibit 1. The appellant filed this appeal in a timely manner on October 25, 2024. See 130 CMR 610.015(B) and Exhibit 2. A determination to reduce prior authorization for service by a Managed Care Organization (MCO) is valid grounds for appeal before the Board of Hearings. See 130 CMR 508.010(B); 130 CMR 610.032(B)(3).

### Action Taken by MassHealth

CCA partially approved the appellant's Level 1 appeal for PCA service hours.

### Issue

Whether the appellant is eligible for more PCA service hours than approved by CCA. See 130 CMR 422.416.

## Summary of Evidence

The CCA's representatives appeared virtually. The appellant and her daughter, who is also her PCA, appeared in person and verified their identities. The following is a summary of the testimonies and evidence provided at the hearing:

The CCA representatives submitted written materials supporting CCA's position and testified that the appellant has been enrolled in CCA's One Care program since October 1, 2018. See Exhibit 6, pp. 1-3, 166-184. CCA received a prior authorization request for renewal of services from [REDACTED], the appellant's Personal Care Management (PCM) agency. See Exhibit 1 and Exhibit 6. The request sought an increase in PCA service hours from 64.25 to 66 hours per week. After review by a CCA medical director, the hours were reduced to 57 hours per week on September 1, 2024. See Exhibit 6, pp. 25-29.

The appellant filed a timely Level 1 internal appeal on August 26, 2024. See Exhibit 1. Through a notice dated September 24, 2024, CCA partially approved the appeal and increased the PCA service hours to 59.25 hours per week. See Exhibit 6, pp. 323-324. The appellant subsequently filed a timely appeal with the Board of Hearings on October 25, 2024. See Exhibit 2. The appellant did not qualify for aid pending protection.

The CCA representative testified that a total of 7 modifications were made to the PCA service hours, namely: bathing (showering and PM wash), grooming (shaving), toileting (bladder care and bowl care), other healthcare (compression socks), and meal preparation (snacks). See generally Exhibit 6. The CCA representative testified to the basis for each modification and the appellant responded to each in turn. Based on testimony at the hearing, CCA fully restored the requested time for PCA assistance with toileting (bowel care-20x1x7).<sup>1</sup> Additionally, the appellant agreed with the following CCA modifications: bathing (PM wash-0x0x0); grooming (shaving-10x1x1); other healthcare (compression socks-0x0x0); and meal preparation (snacks-5x1x7). See Exhibit 6, pp. 169-170, 171, 175-176, and 178.

The following modifications remained in dispute during the hearing:

### Bathing (showering)

The PCM agency requested 50 minutes per day, seven days per week (totaling 350 minutes per week) for PCA maximum assistance with showering. CCA approved 35 minutes per day, seven days per week (totaling 245 minutes per week). The CCA representative testified that the appellant,

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<sup>1</sup> The notation (AxBxC) refers to A minutes per session, B times per day, C days per week.

who has use of her upper extremities, can assist with certain activities while seated. He added that MassHealth regulations allow a maximum of 45 minutes for someone requiring maximum assistance, making the PCM agency's request of 50 minutes excessive. See id. at 41, 48. The appellant is in the category of moderate assistance according to CCA.

The appellant testified that she has undergone multiple surgeries in the past year, including carpal tunnel release on both hands, trigger finger release on nearly all fingers, and elbow release surgery. She disagreed with the fact that she has use of her upper extremities. She stated that while she bathes sitting down, she cannot reach her back, hold onto the grab bar, grasp objects, or extend her arms fully due to her conditions. She added that her PCA assists with washing her hair, back, and repositioning her during the shower due to leg atrophy. The appellant's PCA corroborated this testimony and added that it takes 30 to 45 minutes to complete the showering process depending on the weather and how stiff her mother is at that time. The appellant offered a letter from her physician in support of her argument. See Exhibit 5.

#### Toileting (bladder care)

The PCM agency requested 15 minutes, 6 times per day, 7 days per week (totaling 630 minutes per week) for bladder care. CCA approved 13 minutes, 6 times per day, 7 per week (totaling 546 minutes per week), aligning with task guidelines for moderate assistance, which allow a maximum of 13 minutes per task. See Exhibit 6, p. 44.

The appellant's PCA testified that she assists the appellant with getting on and off the toilet and waits outside the bathroom during use. The appellant stated that she once slipped off the toilet but has not had further incidents since installing a raised toilet seat, which provides her with additional support.

## **Findings of Fact**

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

1. The appellant is a MassHealth member under the age of 65 whose primary diagnoses include spinal stenosis, degenerative disc disease, osteoarthritis, and peripheral vascular disease with a history of back surgery, knee surgery, hand surgery, and foot surgery. (Testimony; Exhibit 5; and Exhibit 6, pp.7-8).
2. The appellant has been enrolled in CCA's One Care program since October 1, 2018. (Testimony and Exhibit 6).
3. CCA received a prior authorization request for renewal of services which sought an increase in PCA service hours from 64.25 to 66 hours per week. (Testimony; Exhibit 1; and

Exhibit 6).

4. After review by a CCA medical director, the hours were reduced to 57 hours per week on September 1, 2024. (Testimony and Exhibit 6).
5. The appellant filed a timely Level 1 internal appeal on August 26, 2024. (Testimony and Exhibit 1).
6. On September 24, 2024, CCA partially approved the appeal and increased the PCA service hours to 59.25 hours per week. (Testimony and Exhibit 1).
7. The appellant then filed a timely appeal with the Board of Hearings on October 25, 2024. (Exhibit 2).
8. CCA made seven (7) modifications to the PCA service hours, namely: bathing (showering and PM wash), grooming (shaving), toileting (bladder care and bowl care), other healthcare (compression socks), and meal preparation (snacks). (Testimony and Exhibit 6).
9. At the hearing, CCA fully restored the requested time for PCA assistance with toileting (bowel care-20x1x7), which resolved the dispute related to PCA assistance with this task. (Testimony).
10. At the hearing, the appellant agreed with CCA's modifications made to the time requested for PCA assistance with bathing (PM wash-0x0x0); grooming (shaving-10x1x1); other healthcare (compression socks-0x0x0); and meal preparation (snacks-5x1x7), which resolved the disputes related to PCA assistance with those tasks. (Testimony).
11. The appellant requested 50 minutes per day, seven days per week (totaling 350 minutes per week) for PCA maximum assistance with bathing (showering). CCA approved 35 minutes per day, seven days per week (totaling 245 minutes per week) for PCA moderate assistance. (Testimony and Exhibit 6).
  - a. The appellant has undergone multiple surgeries in the past year, including carpal tunnel release on both hands, trigger finger release on nearly all fingers, and elbow release surgery. (Testimony).
  - b. The appellant does not have the full use of her upper extremities. She is unable to reach her back, hold onto the grab bar, grasp objects, or extend her arms fully due to her conditions. (Testimony, Exhibit 5, Exhibit 6).
12. The appellant requested 15 minutes, 6 times per day, 7 days per week (totaling 630 minutes per week) for PCA assistance with toileting (bladder care). CCA approved 13 minutes, 6 times per day, 7 per week (totaling 546 minutes per week). (Testimony and

Exhibit 6).

- a. MassHealth task guidelines for moderate assistance allows a maximum of 13 minutes per task. (Testimony and Exhibit 6).

## **Analysis and Conclusions of Law**

MassHealth members younger than 65 years old, except those excluded under 130 CMR 508.002, must enroll in the Primary Care Clinician (PCC) Plan or a MassHealth Managed Care Organization (MCO) available for their coverage type. See 130 CMR 450.117(A); 130 CMR 508.001. MassHealth managed care options include an integrated care organization (ICO, also known as a One Care Plan) for MassHealth Standard and CommonHealth members who also meet the requirements for eligibility set forth under 130 CMR 508.007. Members who participate in an ICO obtain all covered services through the ICO. See 130 CMR 508.007(C).

A member may enroll in an ICO if he or she meets the following criteria:

(A) Eligibility.

(1) In order to be eligible to enroll in an integrated care organization (ICO), a MassHealth member must meet all of the following criteria, and may not be enrolled or concurrently participate in any of the programs or plans listed in 130 CMR 508.007(F):

(a) be 21 through 64 years of age at the time of enrollment;

(b) be eligible for MassHealth Standard as defined in 130 CMR 450.105(A): MassHealth Standard or MassHealth CommonHealth as defined in 130 CMR 450.105(E): MassHealth CommonHealth;

(c) be enrolled in Medicare Parts A and B, be eligible for Medicare Part D, and have no other health insurance that meets the basic-benefit level as defined in 130 CMR 501.001: Definition of Terms; and

(d) live in a designated service area of an ICO.

(2) If a member is enrolled in an ICO and turns 65 years old and is eligible for MassHealth Standard or MassHealth CommonHealth, he or she may elect to remain in the ICO beyond 65 years of age.

See 130 CMR 508.007.

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. See 130 CMR 508.007(C). ICO members may appeal a determination made by an ICO to the Board of Hearings pursuant to 130 CMR 508.010.

Here, the appellant has exhausted all remedies available through the ICO's internal appeal process and has timely filed this appeal with the Board of Hearings. Id.; 130 CMR 610.018.

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

MassHealth covers assistance with the following PCA tasks in pursuant to 130 CMR 422.410.

(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.

(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.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM 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 PCA 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

MassHealth also limits coverage to those services that have been determined to be medically necessary. Pursuant to 130 CMR 450.204(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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

The CCA's One Care Program is a MassHealth ICO. The Member Handbook provides which services the plan covers, including home care services to assist with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL). (Exhibit 6, CCA One Care Member Handbook, p. 91).

Here, there is no dispute that the appellant qualifies for PCA services as reflected by the record. At



the hearing, the appellant accepted CCA's modifications in PCA service hours to the following categories:

Toileting (bowel care): CCA restored the requested time.

Bathing (PM Wash): CCA denied the requested time of 15 minutes daily, 7 days per week;

Grooming (shaving): CCA modified the requested time of 20 minutes, once per week to 10 minutes, once per week;

Other Healthcare (compression socks): CCA denied the requested time of 5 minutes daily, 7 days per week;

Meal Preparation (snacks): CCA modified the requested time of 10 minutes, 7 days per week to 5 minutes, 7 days per week.

The appellant accepted the modifications made by CCA as described above. Since the parties reached a resolution regarding these issues, these portions of the appeal are DISMISSED in accordance with 130 CMR 610.035(8).

Two modifications to the requested time for ADLs remained in dispute, namely: Bathing (showering) and toileting (bladder care).

Bathing (showering)

CCA modified the requested time of 350 minutes per week to 245 minutes per week. The CCA representative testified that the appellant, who has use of her upper extremities, can assist with certain activities while seated which puts her in the category of moderate assistance. See Exhibit 6, p. 48. He added that MassHealth regulations allow a maximum of 45 minutes for someone requiring maximum assistance, making the appellant's request of 50 minutes excessive. See 130 CMR 422.410(A); Exhibit 6, pp. 41, 48.

The appellant credibly testified that she has undergone multiple surgeries in the past year, including carpal tunnel release on both hands, trigger finger release on nearly all fingers, and elbow release surgery. As results, she has lost substantial use of her upper extremities. Both the appellant's PCA through her testimony and her health care provider through written submission corroborated the appellant's substantial decline in the use of her upper extremities. Additionally, the appellant's PCA credibly testified regarding the appellant's weather-related stiffness and explained that it takes anywhere between 30 to 45 minutes to complete the showering process depending on the weather. Accordingly, I find that the appellant has demonstrated by a preponderance of the evidence that maximum assistance is required during her showering, warranting an increase in PCA service hours with showering. "[P]roof by a preponderance of the

evidence is the standard generally applicable to administrative proceedings.” See Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

Since CCA’s guidelines provide an average of 45 minutes of daily assistance for individuals requiring maximum assistance and the PCA’s testimony indicated that showering specifically takes anywhere between 30 to 45 minutes, the midpoint of this range, 37 minutes represents a reasonable and logical estimate. This figure is consistent with both the upper and lower bounds described by the PCA and well within the assistance time outlined by the CCA guidelines. Accordingly, appellant’s request for additional time for this task is APPROVED subject to the order below.

#### Toileting (bladder care)

CCA modified the requested time of 630 minutes per week to 546 minutes per week. The CCA representative testified that CCA approved the maximum time allowed in accordance with the task guidelines for moderate assistance. See Exhibit 6, pp. 44, 48.

The appellant’s PCA testified that she assists the appellant with getting on and off the toilet and waits outside the bathroom during use. The appellant stated that she once slipped off the toilet but has not had further incidents since installing a raised toilet seat, which provides her with additional support.

Per regulation, MassHealth must cover only those medically necessary services that are the least costly option for the agency. See 130 CMR 450.204(A)(2). The appellant’s own testimony demonstrates that she is adequately assisted by a raised toilet seat. Her PCA’s testimony also corroborated the fact that the presence of the PCA is not required during the appellant’s toilet use. As such, I am persuaded that more time should not be allotted for bladder care since the use of a raised toilet seat has eliminated the need for PCA assistance during urination. See Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007)(appellant has the burden "to demonstrate the invalidity of the administrative determination"). Accordingly, appellant’s request for additional time for this task is DENIED subject to order below.

## **Order for MassHealth**

Approve the following PCA service hours effective October 10, 2024:

- Toileting (bowel care): 20 minutes, once per day, 7 days per week;
- Grooming (shaving): 10 minutes, once per week;
- Meal Preparation (snacks): 5 minutes, once per day, 7 days per week;
- Bathing (showering): 37 minutes, once per day, 7 days per week;
- Toileting (bladder care): 13 minutes, 6 times per day, 7 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.

## 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.

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Sharon Dehmand, Esq.  
Hearing Officer  
Board of Hearings

cc: Appellant Representative: [REDACTED]  
[REDACTED]

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