

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2418161
Decision Date:	03/28/2025	Hearing Date:	1/15/2025
Hearing Officer:	Cynthia Kopka	Record Open to:	2/12/2025

Appearance for Appellant:



Appearances for CCA (Respondent):

Cassandra Horne, Appeals and Grievances
Manager


Amy Desilets, Clinical Appeal Nurse

Kaley Emery, Appeals Supervisor



*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	Issue:	Managed Care Organization – Denial of Internal Appeal; PCA services
Decision Date:	03/28/2025	Hearing Date:	1/15/2025
Respondent's Reps.:	Cassandra Horne; Amy Desilets; Kaley Emery	Appellant's Rep.:	
Hearing Location:	Quincy (remote)	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

By notice dated November 15, 2024, Commonwealth Care Alliance (CCA), a MassHealth Senior Care Organization (SCO), denied Appellant's Level I appeal, partially approving Appellant's request for personal care service hours. Exhibit 1. Appellant filed this appeal in a timely manner on November 25, 2024. Exhibit 2. 130 CMR 610.015(B). Denial or modification of assistance is a valid basis for appeal. 130 CMR 508.010, 130 CMR 610.032(B).

Action Taken by Respondent

CCA partially approved Appellant's request for personal care service hours.

Issue

The appeal issue is whether Appellant is eligible for more personal care service hours than approved by CCA.

Summary of Evidence

CCA's representatives, including an appeals and grievances supervisor, nurse reviewer, and appeal supervisor appeared by phone and provided written materials in support. Exhibits 4 and 5. Appellant's representative appeared by phone and submitted a letter from the PCP. Exhibit 2. A summary of testimony and written materials follows.

Appellant has been enrolled in CCA's SCO program since [REDACTED] Appellant is in her [REDACTED] with quickly progressing dementia following the death of her spouse a year prior, and a fall/fracture earlier in the year. Exhibit 4 at 1. Appellant discharged from a skilled nursing facility in [REDACTED] and her long-term service plan is still being established. The request on appeal was for personal care and homemaking services. On September 26, 2024, CCA received a request from Appellant's provider requesting 54.5 hours per week following a functional assessment. On September 27, 2024, CCA reviewed Appellant's request and issued a partial approval, reducing Appellant's hours to 50.5 hours effective September 27, 2024.

On September 30, 2024, Appellant's representative appealed the partial approval. After review, on November 10, 2024, a CCA medical director denied the Level I appeal, agreeing with the approval of 50.5 hours per week for personal care and homemaking. Appellant was notified of the denial on November 15, 2024. Exhibit 1. CCA asserted that Appellant was not entitled to keep the prior level of benefits during the Level I appeal timeframe as the appeal was not filed within 10 days from the date of the initial denial notice or before the services were to be reduced.¹

The CCA nurse representative testified that at issue in this appeal is the reduction in Appellant's overnight assistance hours from 14 hours per week to 10 hours per week. The CCA nurse representative testified that unlike the MassHealth personal care attendant (PCA) program, overnight hours are not provided at a flat rate. A patient who qualifies for the PCA program is allowed a flat rate of 14 hours per week regardless of the time for task for overnight assistance. With the personal care and homemaker program, CCA will approve time based on the actual time required per task.

In Appellant's case, the CCA reviewer considered that Appellant gets up 2 to 3 times per night for toileting and incontinence care. According to the time for task tool, an individual who is completely dependent will be approved for 25 minutes of assistance per episode. CCA approved 75 minutes per night for Appellant's overnight toileting and incontinence needs. This equals 8.75 hours per week. Additionally, the records indicate that Appellant experiences hallucinations at

¹ The facts demonstrate that this is incorrect, and Appellant was entitled to aid pending. CCA notified Appellant of the Level I denial on November 15, 2024. The Board of Hearings (BOH) received Appellant's fair hearing request on November 25, 2024. Appellant was entitled to aid pending during this appeal. The order below approving the appeal in full back to the original date of service, September 27, 2024 provides a retroactive correction of that error to the extent that Appellant's personal care provider would be able to show that unpaid hours had been provided.

night and requires redirection. While the personal care and homemaking program does not allow time for preventative care, the CCA nurse reviewer provided for some time for Appellant to receive hands-on assistance with redirecting during these episodes. The CCA nurse representative testified that night episodes can be particularly difficult for dementia patients. Allowing for this time, CCA approved 10 hours per week for assistance at night for toileting and hands-on care related to hallucinations at night. CCA concluded that Appellant could explore other programs that allow for assistance with monitoring and prevention, such as adult foster care, adult day health, and residential programs. Exhibit 4 at 1.

The records submitted include the time for task tool for Appellant's needs, *id.* at 121-123. According to the tool, Appellant is listed as dependent in, and receives the maximum amount of time weekly for: bathing/dressing/grooming (7 hours weekly), eating/feeding (3.5 hours weekly), transfers (3.5 hours weekly), ambulation (3.5 hours weekly), toileting (3.5 hours weekly), and incontinence management (3.5 hours weekly). *Id.* at 121-122. The descriptions of care needs include references to hands-on assistance for bathing, eating/feeding, transfers, and toileting. *Id.* The time for task tool lists Appellant as independent for medication management because she has a visiting nurse and a lock box. *Id.* at 122. Appellant was approved for 24.5 hours of assistance with ADLs and 16 hours of assistance with IADLs. *Id.* at 122. Also written on the tool regarding night hours was "10 Night hours: Member getting up 2>3 times d/t hallucinations; 3 hours toileting and 7 hours of incontinence management totaling 10 hours of overnight assistance." *Id.* Another note states that Appellant has "to get up 2-3 times at night, member has hallucinations, member can cry she will try getting out of bed and has to be assisted to wheelchair, and incontinence care at night and Member needs to be taken to bathroom at night." *Id.*

Appellant's representative (her daughter) testified that Appellant requires more care than CCA allowed. Appellant's representative testified that Appellant had received 14 hours at night in the past when she received services through Health Point. Appellant's representative alleged that CCA forced Appellant to switch providers to save costs. Appellant's representative was told that Appellant would still be approved for 14 night hours when they made the switch to O'Connell for personal care. The night hours were approved initially but then taken away. Appellant's representative alleged that when she questioned these changes, she was told to put her mother in a nursing home. Appellant's family will not put her in a nursing home because Appellant does better in her home environment. Appellant is not in and out of the hospital like she had been previously. Appellant's representative testified that Appellant has been able to remain home with the services provided and there is no basis for cutting those services. Appellant's providers were appalled that Appellant's hours were reduced. Appellant's representative emphasized that it is important to keep consistency for dementia patients.

Regarding night hours, Appellant's representative argued that Appellant requires more than bathroom assistance. Appellant has asthma and aspirates on mucus, so she needs hands-on assistance for sitting up to use a nebulizer or up-drop machine. Appellant cannot perform this task independently due to her dementia being worse at night. Additionally, Appellant requires frequent

blood sugar monitoring, even at night. On one night, Appellant's blood sugar had dipped to 54, which could have been dangerous if it had been missed. Appellant has also been experiencing gastroparesis and stomach issues and has had diarrhea at night. There are also nights when Appellant does not sleep and needs constant redirection. Appellant cannot be left by herself.

The CCA nurse representative testified that it was helpful to know that Appellant's care at night included blood sugar checks and assistance for asthma. The CCA nurse representative recommended that Appellant have a reevaluation done due to changes in Appellant's condition.

The hearing record was held open through January 29, 2025 for Appellant to submit medical evidence specifically regarding night care needs to both the Board of Hearings (BOH) and CCA by fax. Exhibit 5. CCA had a deadline of February 12, 2025 to review and respond. *Id.*

Included in the hearing file was a letter from Appellant's physician dated [REDACTED] following a visit dated [REDACTED]. Exhibit 2 at 3-4. Appellant's diagnoses include diabetes, severe persistent asthma, chronic bronchitis, and allergic bronchopulmonary aspergillosis. This letter provides that Appellant requires frequent blood glucose monitoring 4 times daily and assistance with inhaler treatments. *Id.*

On January 28 and 29, 2025, Appellant submitted letters in support. Exhibit 6. A letter from Appellant's memory clinic stated that Appellant requires 24/7 care and night care, but did not specify what tasks are needed each night, the frequency Appellant needs these tasks, and how much time is needed to perform the tasks. *Id.* at 4. The letter from Appellant's physician referenced Appellant's recurrent hypoglycemia at night and the endocrinologist's recommendation to check Appellant's blood sugar 3-4 times nightly. *Id.* at 2. The physician also noted that Appellant's worsening nocturnal cough, attributable to Appellant's reduced mobility and dementia, requires setting up and assistance with nebulizer treatments. *Id.*

CCA did not provide a response to the submitted documentation. If CCA did not receive documents, it did not report this to BOH within the deadline provided.

Findings of Fact

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

1. Appellant has been enrolled in CCA's SCO program since April 1, 2021.
2. Appellant is in her [REDACTED] with quickly progressing dementia and diagnoses including diabetes, severe persistent asthma, chronic bronchitis, and allergic bronchopulmonary aspergillosis. Exhibit 2 at 3-4, Exhibit 4 at 1.

3. Appellant discharged from a skilled nursing facility in [REDACTED] after a fall and fracture. Exhibit 4 at 1.
4. Appellant is listed as dependent and requires hands-on assistance for ADLs including bathing, eating/feeding, transfers, and toileting. *Id.* at 121-122.
5. On September 26, 2024, CCA received a request from Appellant's provider requesting 54.5 hours per week of a personal care and homemaking assistance following a functional assessment.
6. On September 27, 2024, CCA reviewed Appellant's request and issued a partial approval, reducing Appellant's hours to 50.5 hours effective September 27, 2024.
7. On September 30, 2024, Appellant's representative appealed the partial approval. After review, on November 10, 2024, a CCA medical director denied the Level I appeal, agreeing with the approval of 50.5 hours per week for personal care and homemaking.
8. On November 15, 2024, CCA notified Appellant that it denied the Level I appeal. Exhibit 1.
9. Appellant filed a timely appeal with the Board of Hearings on November 25, 2024. CCA did not approve aid pending for Appellant's appeal.
10. CCA reduced Appellant's request for 14 weekly hours of personal care services at night to 10 weekly hours at night.
11. CCA testified that it approved 8.75 night hours per week for toileting and incontinence care and 1.25 night hours per week for assistance with night hallucinations.
12. CCA's notes indicate that it approved 3 night hours for toileting and 7 night hours of incontinence management totaling 10 hours of overnight assistance per week. Exhibit 4 at 122.
13. CCA's note on the time for task tool states that Appellant requires assistance to get up 2-3 times at night for incontinence care, bathroom visits, and to deal with hallucinations (getting out of bed and into her wheelchair). *Id.*
14. Appellant's physician documented, in a letter received following the hearing, that Appellant requires assistance at night for blood sugar checks and hands-on assistance with nebulizers for coughing and asthma. Exhibit 6 at 2.
15. CCA did not provide a response to the submitted record-open documentation. If CCA did not receive documents, it did not report this to BOH within the deadline provided.

Analysis and Conclusions of Law

A senior care organization (SCO) is “a comprehensive network of medical, health care and social service providers that integrates all components of care, either directly or through subcontracts. SCOs will be responsible for providing enrollees with the full continuum of Medicare and MassHealth covered services.” Mass. Gen. Laws ch. 118E, § 9D(a). MassHealth members over the age of 65 may elect to enroll in a SCO to deliver the member’s primary care and authorize, arrange, integrate, and coordinate the provision of all covered services for the member. 130 CMR 508.001(C), 508.008(C), 450.117(A). Members whose services are administered by a SCO have notice and appeal rights as set forth in 130 CMR 508.011 and 130 CMR 610.032. An SCO has 30 days to resolve any internal appeals, and the member then has 120 days to request a fair hearing from the Board of Hearings. *See* 130 CMR 508.012; 130 CMR 610.015(B)(7).

CCA Senior Care Options is a MassHealth SCO. CCA included its medical necessity guidelines (MNG) for Personal Care Agency services, Exhibit 4 at 46-50 (MNG #081), and Homemaker Services, *id.* at 51-55 (MNG #076). According to MNG #081 personal care refers to hands-on assistance or cueing to prompt a member to perform a task. *Id.* at 46. According to MNG #081, a member is eligible to receive personal care if the member has

a physical, cognitive, or behavioral-related disability that prevents the member from completing at least one of the following Activities of Daily Living (ADLs) without assistance (cueing, prompting, or hand-on):

- Mobility
- Transfers
- Bathing/Grooming
- Dressing/Undressing
- Eating/feeding
- Toileting
- Taking medication

Id. at 46-47. Personal care may not be authorized for possible or preventative needs. *Id.* at 47. MNG #081 differentiates personal care services from consumer directed personal care attendant (PCA) services in certain circumstances, such as when medical administration versus reminders are needed or when the service is needed for waiver eligibility. *Id.* at 48.²

At issue in this appeal is whether Appellant medically requires more than the 10 hours of personal care services that CCA authorized for night. The records reflect that Appellant requires assistance at night for multiple instances of toileting and incontinence care. CCA’s nurse testified that the amount of toileting assistance Appellant would require would total 8.75 hours

² A MassHealth member is eligible for payment of PCA services if they require physical assistance with two or more ADLs as defined 130 CMR 422.410(A).

per week, though the time for task tool attributes 3 hours for toileting and 7 hours for incontinence management. The CCA appeals and grievances manager also testified that personal care services does not cover possible or preventative needs, seemingly to assert that Appellant's needs are anticipatory. CCA did not explain or address Appellant's concern that Appellant was moved from the PCA program to the personal care services program, despite the fact that Appellant meets MassHealth's clinical criteria for PCA assistance as she requires hands-on care with more than 2 ADLs.

Appellant's representative offered credible testimony and medical letters demonstrating that Appellant requires more assistance than CCA contemplated when approving 10 hours for night assistance per week. This includes Appellant's needs for blood sugar monitoring 3 to 4 times nightly, asthma and pulmonary interventions, and assisting Appellant with transfers when she has night hallucinations. CCA did not offer a response to Appellant's evidence. Appellant has met her burden of demonstrating that CCA's approval of 10 night hours of personal care was made in error. Accordingly, this appeal is approved.

Order for Respondent

Restore Appellant's request for 54.5 hours of personal care services per week effective September 27, 2024, for a period of one year, including 14 hours weekly of personal care services at night, through September 26, 2025.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

[REDACTED]

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