

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2155725
Decision Date:	10/04/2021	Hearing Date:	09/09/2021
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Cheryl Eastman, RN, Optum; Laura Rose,
RN, Optum (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:	Denied	Issue:	PCA services
Decision Date:	10/04/2021	Hearing Date:	09/09/2021
MassHealth's Rep.:	Cheryl Eastman, RN, Optum; Laura Rose, RN, Optum (observing)	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South Tower	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 July 12, 2021, MassHealth modified the appellant's request for prior authorization for 30.5 hours per week of day/evening personal care attendant (PCA) services and approved 25 hours per week for day/evening PCA services, because MassHealth determined that time requested for assistance with certain activities did not satisfy the criteria set forth in the MassHealth medical necessity and PCA regulations. (130 CMR 422.403; 450.204 and Exhibit 1). The appellant filed this appeal in a timely manner on July 23, 2021 and received aid pending appeal. (see 130 CMR 610.015(B) and Exhibit 2; testimony). Modification of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410 in determining that time requested for PCA assistance with certain activities did not satisfy the criteria

set forth in the PCA and medical necessity regulations.

Summary of Evidence

The appellant appeared telephonically. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for personal care attendant (PCA) services.

The appellant's provider, the Northeast ARC, submitted a re-evaluation request for 30.5 hours per week in day/evening PCA services on July 6, 2021. (Exhibit 4, p. 3). By notice dated July 12, 2021, MassHealth approved 25 hours per week in day/evening PCA services. (Testimony, exhibit 1). The MassHealth representative testified that MassHealth modified the time requested for PCA assistance with prefilling medication box, and meal preparation and clean up.

The appellant is diagnosed with multiple sclerosis with generalized weakness, muscle spasms, and neurogenic bladder. (Exhibit 4, p. 8). The appellant lives with her spouse. (Testimony).

Assistance with Medications: The appellant's provider requested 10 minutes, once a day, for PCA assistance with pre-filling the appellant's medication box. (Exhibit 4, p. 18). The provider noted that the PCA assists with prefilling weekly medication minder due to the appellant's decreased hand grasp, generalized weakness, and decreased fine motor control. (Exhibit 4, p. 18). The MassHealth representative stated that MassHealth approved 10 minutes, once a week, for PCA assistance with prefilling the appellant's medication box because time requested was longer than ordinarily required for this task. On the PCA evaluation, the appellant's provider listed the medications as follows: amitriptyline bid, Neurontin, Prilosec, APAP, ibuprofen on infusion days, Baclofen, Copaxone 20 mg sc daily. (Exhibit 4, p. 8). The provider did not provide dose, route, and frequency of the medications, except for the Copaxone subcutaneous injection once a day. (Exhibit 4, p. 8). The MassHealth representative stated that it should take no longer than 10 minutes, once a week, for the PCA to fill the appellant's medication box with the daily medications.

The appellant stated that she cannot open her medication bottles and the PCA lays out her pills for her. The appellant stated that the PCA puts the appellant's pills into pill cups 3 times a day. The appellant stated that the PCA also gives the appellant an injection and sometimes gives her the medications.

The MassHealth representative stated that the appellant's provider only requested time for prefilling the medication minder and did not request time for assisting with injections or administration of the medication. The MassHealth representative stated that MassHealth would approve 5 minutes a day for PCA assistance with filling the appellant's medication cups. The appellant stated that it takes longer than 5 minutes for the PCA to fill the daily medication cups.

Meal Preparation and Clean Up: The appellant's provider requested 90 minutes a day, 6 days a week, for PCA assistance with meal preparation and clean up. (Exhibit 4, p. 22). The appellant's provider wrote that the PCA assists with all aspects of meal preparation due to the appellant's

inability to bend, lift, or carry, and generalized weakness, history of falls, inability to grasp, easily fatigued, and decreased standing tolerance and strength. (Exhibit 4, p. 23). The appellant's provider noted further that the appellant's spouse works long hours outside of the home six days a week. (Exhibit 4, p. 23).

The MassHealth representative stated that MassHealth approved 45 minutes, 6 days a week, for PCA assistance with meal preparation, because pursuant to MassHealth regulation, when a member lives with family, instrumental activities of daily living, such as meal preparation, are shared tasks.

The appellant stated that her spouse is disabled and has applied for his own PCA services. The appellant noted that her spouse does not work and she does not know why her provider wrote that he works long hours, six days a week. The appellant stated that the PCA prepares meals for both her and her spouse.

The MassHealth representative stated that PCA assistance with meal preparation is for the appellant only, not for her spouse. The MassHealth representative stated that if the appellant's spouse gets his own PCA, meal preparation will be a shared task between the two PCAs.

On the PCA evaluation, the appellant's provider noted that verbal assent was given telephonically by the appellant on June 16, 2021 in place of the required member signature on the evaluation, confirming that the appellant agreed that she was evaluated and reviewed the evaluation. (Exhibit 4, pp. 29, 33, 35).

Findings of Fact

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

1. The appellant's provider, the Northeast ARC, submitted a re-evaluation request for 30.5 hours per week in day/evening PCA services on July 6, 2021; by notice dated July 12, 2021, MassHealth approved 25 hours per week in day/evening PCA services.
2. MassHealth modified the time requested for PCA assistance with prefilling medication box, and meal preparation and clean up.
3. The appellant is diagnosed with multiple sclerosis with generalized weakness, muscle spasms, and neurogenic bladder; the appellant lives with her spouse.
4. The appellant's provider requested 10 minutes, once a day, for PCA assistance with pre-filling the appellant's medication box.
5. After hearing testimony at hearing, MassHealth approved 5 minutes, once a day, for PCA assistance with pre-filling the appellant's medication cups.
6. The appellant takes amitriptyline bid, Neurontin, Prilosec, APAP, ibuprofen on infusion days,

Baclofen, and Copaxone 20 mg subcutaneous injection daily; the appellant's provider did not provide dose, route, and frequency of the medications, except for the Copaxone subcutaneous injection once a day.

7. The appellant's provider requested 90 minutes a day, 6 days a week, for PCA assistance with meal preparation and clean up.
8. The appellant's provider wrote that the PCA assists with all aspects of meal preparation due to the appellant's inability to bend, lift, or carry, and generalized weakness, history of falls, inability to grasp, easily fatigued, and decreased standing tolerance and strength.
9. The appellant's provider wrote that the appellant's spouse works long hours outside of the home six days a week.
10. MassHealth approved 45 minutes, 6 days a week, for PCA assistance with meal preparation.
11. The appellant's PCA prepares meals for both her and her spouse.
12. On the PCA evaluation, the appellant's provider noted that verbal assent was given telephonically by the appellant on June 16, 2021 in place of the required member signature on the evaluation, confirming that the appellant agreed that she was evaluated and reviewed the evaluation.

Analysis and Conclusions of Law

MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of 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.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for prior authorization to be approved. 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) A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A), (B), (C)).

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.

(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.

(130 CMR 422.410).

The appellant's provider requested 10 minutes, once a day, for PCA assistance with pre-filling the appellant's medication box. After hearing testimony at hearing, MassHealth approved 5 minutes, once a day, for PCA assistance with pre-filling the appellant's medication cups. The appellant takes 6 medications and in addition has a subcutaneous injection of Copaxone daily. The appellant's PCA puts the appellant's pills into pill cups 3 times a day. The appellant takes ibuprofen only on infusion days. The appellant's provider did not provide dosing or frequency for any of the medications other than Copaxone and ibuprofen. Even if the appellant took all her medication, 3 times a day, the PCA would only have to put 5 or 6 pills into 3 medication cups, and this should take no more than 5 minutes. MassHealth's modification of time requested for PCA assistance with prefilling the appellant's medication cups is upheld and the appeal is denied as to that issue.

The appellant's provider requested 90 minutes a day, 6 days a week, for PCA assistance with meal preparation and clean up. MassHealth approved 45 minutes a day for PCA assistance with meal preparation and clean up. The appellant's provider wrote that the appellant's spouse works long hours outside of the home six days a week. The appellant stated that her spouse does not work because he is disabled. The appellant gave verbal assent to her provider on June 16, 2021 in place of the required member signature on the evaluation, confirming that she agreed that she was evaluated and reviewed the evaluation. It is imperative that the appellant inform the provider if any information on an evaluation is incorrect to ensure that MassHealth has accurate information when making its determination. PCA assistance with meal preparation is for the appellant only. The appellant noted that her PCA also prepares meals for her spouse. That is not a covered service under the PCA program. There was no evidence that the appellant has any special dietary needs. 45 minutes a day is sufficient for PCA assistance with preparing the appellant's meals. Time spent waiting for food to cook is not a hand on task and not included in PCA time approved. The appellant's provider requested assistance with meal preparation for 6 days a week. If the appellant now needs assistance 7 days a week, she should discuss this with her provider. MassHealth's modification of time for PCA assistance with meal preparation is upheld and the appeal is denied as

to this issue.

Order for MassHealth

Remove aid pending; approve 5 minutes, once a day, for PCA assistance with prefilling medication cups; proceed with modifications set forth in the notice dated July 12, 2021.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: Optum MassHealth LTSS