

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Numbers: 2176148

Decision Date: 9/30/2021

Hearing Date: 9/22/2021

Hearing Officer: Sara E. McGrath

Appearance for Appellant:



Appearances for MassHealth:


Donna Burns, RN

Laura Rose, RN (observing)



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Prior Authorization (PCA Services)
Decision Date:	9/30/2021	Hearing Date:	9/22/2021
MassHealth Rep:	Donna Burns, RN	Appellant Rep:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated August 2, 2021, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410; Exhibit 1). The appellant filed a timely appeal on August 11, 2021 (130 CMR 610.015(B)). Denial of a request for PCA services is a valid basis for appeal (130 CMR 610.032). After the hearing, the appellant requested that the hearing officer re-open the record for the submission of additional evidence (Exhibit 5). The hearing officer granted the request, and the record was held open until October 1, 2021 for the submission of additional information.

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a wheelchair-bound female in her 60s whose provider, The LifePath, Inc., submitted a request for PCA services on her behalf. The record reflects that the appellant has a primary diagnosis of progressive multiple sclerosis. She is obese and has a history of lacunar infarct stroke. Her right knee is fixed in flexion and her right hip is in contracture. She has spinal stenosis at L5/S1, bilateral foot drop, a left rotator cuff injury, and left arm neuropathy. She has a severe vision impairment. She has chronic wounds to the sacrum, right heel, left calf, and right hip. She has rectal prolapse, bowel incontinence, and frequent urinary tract infections. She has severe trigeminal neuralgia and significant pain (Exhibit 3, p. 9).¹ On July 26, 2021, MassHealth received a re-evaluation prior authorization request for PCA services. The appellant seeks PCA services in the amount of 108 day/evening hours per week and 14 night hours per week. On August 2, 2021, MassHealth modified the request and authorized 98.25 day/evening hours per week and 14 night hours per week.

MassHealth made eight modifications to the prior authorization request (Exhibit 1). The appellant appeared at hearing telephonically and disputes each modification.² At hearing, the parties were able to resolve many of the disputed issues, and MassHealth restored the time requested for assistance with the following tasks: Repositioning, quick wash, shampoo, oral care, assistance with medications, and bladder irrigation. These portions of the appeal are therefore dismissed.

The parties were unable to resolve disputes regarding the time for PCA assistance with nail care and with medical transportation.

The appellant requested time for assistance with nail care, as follows: 5 minutes, 1 time per day, 7 days per week, for a weekly total of 35 minutes (Exhibit 3, p. 15). The nurse evaluator writes that the appellant is dependent for all grooming tasks, including to clean/clip nails (Exhibit 3, p. 16). MassHealth modified this request to 10 minutes per week. The MassHealth nurse consultant noted that because the appellant sees a podiatrist four times per year, the PCA presumably assists the appellant with her fingernails only. Because nails grow slowly, MassHealth considers 35 minutes per week for assistance with this task to be excessive and longer than ordinarily required. The appellant testified that she is able to take care of her own fingernails. She explained that she has problems with her toenails and has had three toenails completely removed. She testified that her podiatrist wants the PCA to take care of her toenails, which includes keeping them clean and trimming them straight across. The podiatrist also wants the PCA to perform physical therapy-like movement to her toes to ensure adequate circulation, and wants creams applied as well. The

¹ The appellant requested that the following additional diagnoses be noted: toxic metabolic encephalopathy, pulmonary emboli, chronic saddle embolus from which she was resuscitated, lymphoma, stage IV sacral ulcer, osteomyelitis, angiomyolipoma, tendonitis left shoulder, Parkinson's variant of dystonic twisting, pelvic obliquity, paraplegia, chronic bladder stones necessitating cystolitholapaxy and cystolithotripsy to identify and remove stones (Exhibit 5, p. 3).

² The appellant also submitted documentation before and after hearing in support of her appeal (Exhibits 4 and 5).

MassHealth nurse consultant replied and explained that separate time has been authorized for assistance with lotions, and for assistance with passive range of motion exercises (Exhibit 3).

The appellant requested time for assistance with medical transportation, as follows: 173 minutes per week (Exhibit 3, p. 28). This amount of time was calculated by adding the total travel time of 3,560 (this figure is the total number of visits multiplied by the round-trip travel time of each appointment) to the total transfer time of 5,400 (this figure is the total time in/out of home (60 minutes) plus the total time in/out of office (30 minutes), multiplied by the number of appointments (60)) and then dividing the total by 52, resulting in a weekly average of 173 minutes. MassHealth initially modified the request to 91 minutes per week (Exhibit 3, p. 28).³ The nurse consultant testified that, upon review, she would be willing to restore most of the requested time for assistance with this task. She explained, however, that LifePath made two errors in its calculations. First, there is an error in the round-trip travel time to a urologist in Holyoke (the time was listed as 120 minutes, but should have been 60 minutes) (Exhibit 3, p. 34). Further, LifePath's request indicates that the appellant sees her dentist 6 times per year (Exhibit 3, p. 34). The appellant's dentist, however, submitted a letter stating that he seeks the appellant, on average, 5 times per year (Exhibit 4, p. 3). With adjustments made only to remedy these two errors, MassHealth agreed to authorize 139 minutes per week for assistance with medical transportation.⁴ Post-hearing, the appellant clarified that two PCAs must assist with Hoyer lift transfers when she goes to the dentist (Exhibit 5, p. 2). MassHealth reviewed this submission and agreed to authorize an additional 30 minutes per visit for the 5 dental visits per year, to account for the additional PCA needed, and increased the authorization to 167 minutes per week (Exhibit 7).

The appellant testified that she has been seeing her medical providers more often in the past six weeks, although she noted that some of the visits have been telehealth visits. She explained that even though transportation is not an issue with a telehealth visit, her PCA provides extensive assistance in preparing and organizing her for the appointment, setting up the Zoom call, taking notes, and printing notes and other documents after the appointment. The appellant also noted that some of her medical providers are not identified on LifePath's list of providers, including a new hematologist and several visits she made to providers in Boston.

The appellant testified generally that one of her PCAs is the daughter of State Representative John J. Lawn, who serves as the House Chair of the Joint Committee on Healthcare Financing. She stated that Representative Lawn told his daughter that he agrees that it does not make sense that MassHealth would cut her hours when her conditions are progressive. He agrees with her point that PCAs are much less costly than nursing home care. The appellant testified that she is a widow and has no children. She has no parents or siblings. She has one very elderly relative living in Texas (Exhibit 5, pp. 2-3).

³ The MassHealth nurse consultant did not explain the specifics of MassHealth's modification to 91 minutes per week.

⁴ MassHealth's authorization of 139 minutes per week restored all time requested for assistance with medical transportation – except the time related to the two errors (34 minutes per week).

Findings of Fact

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

1. The appellant is a female in her 60s with a primary diagnosis of progressive multiple sclerosis.
2. The appellant is obese and has a history of lacunar infarct stroke; her right knee is fixed in flexion and her right hip is in contracture; she has spinal stenosis at L5/S1, bilateral foot drop, a left rotator cuff injury, and left arm neuropathy; she has a severe vision impairment; she has chronic wounds to the sacrum, right heel, left calf, and right hip; she has rectal prolapse, bowel incontinence, and frequent urinary tract infections; she has severe trigeminal neuralgia and significant pain.
3. On July 26, 2021, MassHealth received re-evaluation prior authorization request for PCA services; the appellant seeks PCA services in the amount of 108 day/evening hours per week and 14 night hours per week.
4. On August 2, 2021, MassHealth modified the request and authorized 98.25 day/evening hours per week and 14 night hours per week.
5. At hearing, the parties were able to resolve many of the disputed issues, and MassHealth restored the time requested for assistance with the following tasks: Repositioning, quick wash, shampoo, oral care, assistance with medications, and bladder irrigation.
6. The parties were unable to resolve the dispute regarding the time for PCA assistance with nail care and with medical transportation.
7. The appellant requested time for assistance with nail care, as follows: 5 minutes, 1 time per day, 7 days per week, for a total of 35 minutes per week; MassHealth modified this request to 10 minutes per week on the basis that the time requested was excessive.
8. The appellant independently handles the care of her fingernails.
9. The PCA assists the appellant with cleaning and trimming her toenails, applying cream, and performing physical therapy-like exercises to her toes to promote circulation.
10. MassHealth has authorized separate time for PCA assistance with applying lotion and with passive range of motion exercises.
11. The appellant requested time for assistance with medical transportation, as follows: 173 minutes per week. MassHealth initially modified the request to 91 minutes per week but adjusted its modification to 167 minutes per week.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs, 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 or a nurse practitioner who is responsible for the oversight of the member's health care; (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 personal care agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

- (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 basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: 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 and 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 personal care services; and
- (c) other special needs approved by MassHealth as being instrumental to the health care of the member.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

The appellant disputes MassHealth’s modification of the time requested for PCA assistance with nail care and with medical transportation.

The appellant has not demonstrated that MassHealth’s authorization of 10 minutes per week for PCA assistance with nail care is insufficient to meet her needs. The appellant clarified at hearing that PCA assistance is needed for toenail care only. She explained that the PCA cleans and trims the nails, as well as applies lotion and performs toe exercises. As noted by the MassHealth nurse consultant, separate time was allowed for assistance with the application of lotions and for assistance with passive range of motion exercises (Exhibit 3). Thus, assistance in this area is limited to PCA assistance with cleaning and trimming her toenails. The appellant did not present any specific evidence that this task takes longer than 10 minutes per week. This portion of the appeal is denied.

The appellant has not demonstrated that MassHealth’s authorization of 167 minutes per week for PCA assistance with medical transportation is insufficient to meet her needs. The appellant had requested 173 minutes per week for PCA assistance with this task, but that request was based on partially inaccurate information (number of visits to dental provider and round-trip distance to urologist). MassHealth recalculated its authorization based on accurate information, and then added more time to account for the two PCAs needed to assist the appellant at the dentist (Exhibit 7). The appellant did not specifically dispute the number of visits to the providers identified on LifePath’s list, nor did she specifically dispute the travel or transfer time. The appellant’s dispute was focused more on the providers missing from the list, and on the tasks her PCA assists with when she has a telehealth appointment.⁵ As noted by MassHealth, telehealth appointments do not involve travel time, and thus the specifics of the assistance provided for these appointments are not relevant. Further, if the

⁵ The appellant’s pre-hearing submission also focused on modifications made to the number of visits to specific providers (Exhibit 4, pp. 6-9). Because the MassHealth nurse consultant restored this time at hearing (except as to the number of visits to the dentist, which was confirmed by the dentist), the appellant’s arguments here are moot.

appellant has additional providers not identified in LifePath's list, the appropriate remedy is for the appellant to contact LifePath to request an adjustment. Without more, the appellant has not met her burden, and this portion of the appeal is denied as well.

The appeal is dismissed in part and denied in part.

Order for MassHealth

Implement agreements made at hearing and terminate aid pending.

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, Division of Medical Assistance, at the address on the first page of this decision.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum