

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part	Appeal Number:	2178311
Decision Date:	12/22/2021	Hearing Date:	12/10/2021
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se

Appearance for MassHealth:

Via telephone:

Mary-Jo Elliott, RN



*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 in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	12/22/2021	Hearing Date:	12/10/2021
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South	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

Through a notice dated September 14, 2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on October 25, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. She testified that the documentation submitted showed that the appellant is an adult female under the age of 65 with a primary diagnosis of spinal muscular atrophy type II who is wheelchair dependent. She has a service dog twenty-four hours per day, seven days per week.

The appellant's personal care management (PCM) agency submitted a prior authorization for PCA services on August 29, 2021 requesting 82 hours and 0 minutes of day/evening hours per week and 2 nighttime hours per night for the dates of service of September 17, 2021 through September 16, 2022. On September 14, 2021, MassHealth modified the request to 76 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night. The appellant appeared at hearing via telephone. At hearing, the parties were able to resolve the disputes related to PCA assistance with the tasks of other grooming (modified to 5 minutes, 2 times per day, 7 days per week); dressing (fully restored as requested to 30 minutes, 1 time per day, 7 days per week, and 20 minutes, 1 time per day, 7 days per week); and undressing (fully restored as requested to 15 minutes, 1 time per day, 7 days per week, and 10 minutes, 1 time per day, 7 days per week). As a result, only PCA assistance with the task of equipment maintenance remained at issue.

Equipment Maintenance

The appellant requested 182 minutes per week for equipment maintenance. MassHealth modified the request to 35 minutes per week.

The MassHealth representative stated that it was a lot of time to request for equipment maintenance which typically includes wiping down equipment. She testified that pursuant to the documentation submitted, the appellant has a BiPAP machine, prone stander, wheelchair, and "other." The comments note that the PCA cleans and maintains six items that are needed for the consumer's safe care. An attached list shows that the appellant also uses a compression vest, cough assist device, and pneuma boots. The list also breaks down the amount of time needed to maintain and clean each device.

The appellant testified that the wheelchair maintenance involved more than just wiping down and cleaning, but also checking that all of its parts are functioning and in proper working order, which the appellant is unable to do herself. For example, if there is a loose piece, the PCA will tighten it. If such wheelchair maintenance is not done daily, it creates a safety issue. She has had various wheelchair issues over the past year, so she is very vigilant about its maintenance, especially since there can be a four month wait if she needs an actual repair from the wheelchair company.

She testified that all of the equipment is used daily, some multiple times per day. The BiPAP machine, cough assist machine, and compression vest have tubing and filters that need to be cleaned daily. Currently, it is difficult to obtain new tubing because of a shortage, so the cleaning of it is even more important and time-consuming since it gets replaced less frequently. The appellant also

testified that she has a service dog and a service dog is considered necessary medical equipment. The dog needs to be cared for, fed, and its equipment maintained, none of which she can do herself.

The MassHealth representative testified that the PCA is not qualified to take care of mechanical issues on the wheelchair due to liability issues. She stated that 182 minutes is outside of the guidelines for what she can approve for equipment maintenance. She also suggested that there is some overlap with time allowed for PCA assistance with the task of other healthcare needs.¹ She was willing to approve 60 minutes per week.

The appellant responded that she was willing to compromise on the time authorized for equipment maintenance, but 60 minutes per week was insufficient for her needs given the amount of equipment she has, time it takes to maintain, and her complete dependence on the PCA for it.

Findings of Fact

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

1. The appellant is an adult female MassHealth member under the age of 65 with a primary diagnosis of spinal muscular atrophy type II (Testimony and Exhibit 4).
2. The appellant is wheelchair dependent and has a service dog twenty-four hours a day, seven days per week (Testimony and Exhibit 4).
3. MassHealth received a prior authorization request on behalf of the appellant requesting 82 hours and 0 minutes of day/evening hours per week and 2 nighttime hours per night for the dates of service of September 17, 2021 through September 16, 2022 (Testimony and Exhibit 4).
4. On September 14, 2021, MassHealth modified the request to 76 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night (Testimony and Exhibit 4).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with the tasks of other grooming (modified to 5 minutes, 2 times per day, 7 days per week); dressing (fully restored as requested to 30 minutes, 1 time per day, 7 days per week, and 20 minutes, 1 time per day, 7 days per week); and undressing (fully restored as requested to 15 minutes, 1 time per day, 7 days per week, and 10 minutes, 1 time per day, 7 days per week) (Testimony).

¹ Under “Other Healthcare Needs” which was approved as requested, the comments state: “Consumer uses Bipap for sleep apnea; PCA sets up, checks and adjusts device as needed, taking mask on and off and making sure of placement. Consumer has a compression vest she uses, attached to a device to ensure comfort and safety; PCA removes gently as required. PCA helps consumer with cough assist device which she uses frequently. PCA helps consumer with prone stander, using the hoist lift and then needing a second person to perform fully safe care and standing, whether putting her in it or taking her out. Consumer uses pneuma boots for edema in legs, PCA needs to apply then attach the apparatus and removes when finished.”

6. The appellant requested 182 minutes per week for equipment maintenance. MassHealth modified the request to 35 minutes per week, but at hearing offered to increase it to 60 minutes per week. (Testimony and Exhibit 4).
7. The PCA cleans and maintains six items that are needed for the consumer's safe care. Those items include the appellant's wheelchair, BiPAP machine, prone stander, compression vest, cough assist device, and pneuma boots (Testimony and Exhibit 4).
8. All of the equipment is used daily, some multiple times per day. The BiPAP machine, cough assist machine, and compression vest have tubing and filters that need to be cleaned daily (Testimony).
9. There is a shortage of tubing so it is not being replaced frequently, leading to more time spent cleaning it instead of using new tubing (Testimony).

Analysis and Conclusions of Law

MassHealth covers personal care 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 personal care services 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 following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the 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 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 the Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 the Division 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.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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.**

(Emphasis added).

Additionally, MassHealth will consider individual circumstances in determining the number of hours of physical assistance that a member requires for IADLs. See 130 CMR 422.410(C)(3).

The appeal is dismissed as to the following tasks because at hearing the parties were able to resolve the disputes related to PCA assistance with other grooming, dressing, and undressing.

Regarding the appellant's request for equipment maintenance, the appeal is approved. The appellant has demonstrated that the additional PCA assistance with equipment maintenance is medically necessary and should be authorized. The appellant requested 182 minutes per week, which works out to 26 minutes per day. MassHealth argued that it was too much time and outside of the guidelines for what she can approve; however, the regulations clearly allow for PCA assistance with the IADL of equipment maintenance and there is no time limitation in the regulation. While it might be outside what MassHealth usually approves for equipment maintenance, the regulations state MassHealth will consider individual circumstances in determining the assistance required for IADLs, such as equipment maintenance. MassHealth also argued that there was a duplication of some of the time approved in "Other Healthcare Needs." A reading of the comment section in the "Other Healthcare Needs" area of the prior authorization request show that there was no time requested for any cleaning or maintenance of her devices in that section. Based on the comments, "Other Healthcare Needs" included time for assisting the appellant solely with the application and use of her devices, not any cleaning or maintenance. There is no evident overlap based on the documentation provided.

The appellant has six pieces of equipment including her wheelchair, BiPAP machine, prone stander, compression vest, cough assist device, and pneuma boots, all of which are used daily and require daily maintenance. The appellant clearly explained the maintenance and cleaning needs of her multitude of devices, which is more than just wiping everything down. Given the current shortage

of tubing, she is unable to get new tubing and it all must be cleaned. Additionally, she requires her PCA to clean and inspect her wheelchair daily to maintain proper, safe function. The appellant is totally dependent on her PCA to perform all of the equipment maintenance. Her testimony was thorough and credible, establishing the medical necessity for the full 182 minutes per week in equipment maintenance.²

For these reasons, the appeal is approved in part and dismissed in part.

Order for MassHealth

Approve 182 minutes per week for equipment maintenance and implement agreements made at hearing for other grooming, dressing, and undressing.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215

² The appellant raised the matter of a service dog being considered necessary medical equipment. The prior authorization request did not include the dog on the list medical equipment in calculating the time needed for equipment maintenance. But it is worth noting that the regulation is open-ended about what “other special needs” are approved by MassHealth. The appellant’s testimony was credible and established that her service dog is necessary medical equipment that is instrumental to her health care, which serves to further justify the amount of time requested for equipment maintenance as both necessary and not excessive.