

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2178594
Decision Date:	02/03/2022	Hearing Date:	01/07/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN *via* telephone



*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:	Dismissed in Part; Denied in Part	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	02/03/2022	Hearing Date:	01/07/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 October 25, 2021, MassHealth modified the appellant's prior authorization (PA) request for PCA services. (See 130 CMR 422.417 and Exhibit 1, pp. 3-5). The appellant filed this appeal in a timely manner on November 10, 2021. (See 130 CMR 610.015(B) and Ex. 1, p. 1). Modification of a PA request for PCA services is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000 *et seq.*, in modifying the PA request for PCA services.

Summary of Evidence

The appellant is an individual under the age of 65, with a primary chronic condition of spastic cerebral palsy. (Ex. 3, p. 8). On October 14, 2021, the personal care management agency (the provider) submitted a PA request for a reevaluation of PCA services. (Ex. 3, pp. 7-25). The provider requested 75 hours of day and evening services per week and two hours of services per night for one year. (Ex. 1, p. 4; Ex. 3, pp. 6, 7-25). In a written notice dated October 15, 2021, MassHealth

approved 72 hours of day and evening services per week and two hours of services per night from November 11, 2021 through November 10, 2022. (Ex. 1, pp. 3-5; Ex. 3, pp. 4-6). The difference in hours between what was requested and what was approved consisted of modifications to the allotment of time for two activities of daily living (ADLs) and one instrumental activity of daily living (IADL): mobility (ADL); passive range of motion exercises (PROM) for the lower extremities (ADL); and shopping (IADL). (Ex. 1, p. 4; Ex. 3, pp. 5, 10, 11, 25). During the course of the hearing, the MassHealth representative restored the time requested for PROM for the lower extremities to 20 minutes, twice per day, seven days per weeks. (Ex. 3, p. 12).¹ Additionally, the appellant's representative accepted MassHealth's denial of the time requested for shopping.² (Ex. 1, p. 4; Ex. 3, p. 5).

The MassHealth representative testified that for mobility, the provider requested 5 minutes, 4 times per day, 5 days per week and 5 minutes, 8 times per day, 2 days per week. (Ex. 3, p. 10). MassHealth modified this amount to 5 minutes 4 times per day, 5 days per week; and 5 minutes, 6 times per day, 2 days per week. (Ex. 1, p. 4; Ex. 3, p. 5). The MassHealth representative explained that mobility consists of assistance with movement in the appellant's living space. This is not the ADL "transfers" which means, for example, assistance moving from a bed to a wheelchair or a wheelchair to a couch. This is also not the ADL "repositioning" which means assistance with occasional readjustments while in one position. The MassHealth representative confirmed with the appellant's representative that the reason for the breakdown into a 5-day segment and a 2-day segment was that the appellant was in a day program during the weekdays and was at home on the weekends. The MassHealth representative stated that MassHealth modified the frequency of this on the weekends, reducing the frequency from the requested 8 times per day to 6 times per day. (Ex. 1, p. 3; Ex. 3, pp. 4, 10). The MassHealth representative stated the documentation did not support the requested frequency. The notes for mobility in the PA submission stated that the appellant required "Max A[ssistance] for room to room mobility in wheelchair. Dependent...on/off all surfaces in home d/t ataxic gait, essentially N[on] W[eight] B[earing] d/t de-conditioning, decreased G[eneral] M[edical] C[ondition], decreased balance, weakness...Consumer has w/c that she uses when outside of the home." (Ex. 3, p. 11).

The appellant's representative stated that the appellant has not been to the day program for a month because of the pandemic. The appellant's representative stated that the appellant could not walk or stand at all on her own because of her physical deterioration over the last year. (Ex. 1, p. 2). The appellant's representative stated that on a typical day the appellant moves from her bedroom to the kitchen; then the kitchen to the couch to lay down and requires further assistance with movement. The appellant's representative stated that the appellant receives a mobility assist between 6 and 8 times during the weekend. The appellant's representative stated that the appellant requires a wheelchair in order to be moved even in the home. (Ex. 1, p. 2). The MassHealth representative suggested that time approved in other areas, such as that allotted for transportation to the day

¹ In its initial determination, MassHealth reduced the frequency to once per day. (Ex. 1, p. 4; Ex. 3, p. 5).

² The provider requested 20 minutes per week for this IADL. The MassHealth representative explained that the appellant lives with family members and that under the regulations when a member is living with family members, the family members will provide assistance with most IADLs. (See 130 CMR 422.410(C)(1); Ex. 3, p. 40). The MassHealth representative further explained that the provider has never previously requested time for this IADL.

program, could be applied to this area. The appellant's representative was encouraged to review the documentation MassHealth sent to him for the hearing in order to determine whether time or frequency in other areas could be increased to meet the appellant's PCA needs.

Findings of Fact

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

1. The appellant is an individual under the age of 65, with a primary chronic condition of spastic cerebral palsy. (Ex. 3, p. 8).
2. On October 14, 2021, the provider submitted a PA request for a reevaluation of PCA services. (Ex. 3, pp. 7-25).
3. The provider requested 75 hours of day and evening services per week and two hours of services per night for one year. (Ex. 1, p. 4; Ex. 3, pp. 6, 7-25).
4. In a written notice dated October 15, 2021, MassHealth approved 72 hours of day and evening services per week and two hours of services per night from November 11, 2021 through November 10, 2022. (Ex. 1, pp. 3-5; Ex. 3, pp. 4-6).
5. The difference in hours between what was requested and what was approved consisted of modifications to the allotment of time for two ADLs (mobility and PROM for the lower extremities) and one IADL (shopping). (Ex. 1, p. 4; Ex. 3, pp. 5, 10, 11, 25).
6. During the course of the hearing, the MassHealth representative restored the time requested for PROM for the lower extremities to 20 minutes, twice per day, seven days per weeks. (Testimony of the MassHealth representative; Ex. 3, p. 12).
7. The appellant's representative accepted MassHealth's reduction to 0 of the time requested for shopping. (Testimony of the appellant's representative; Ex. 1, p. 4; Ex. 3, p. 5).
8. For mobility, the provider requested 5 minutes, 4 times per day, 5 days per week and 5 minutes, 8 times per day, 2 days per week. (Testimony of the MassHealth representative; Ex. 3, p. 10).
9. MassHealth modified this amount to 5 minutes 4 times per day, 5 days per week; and 5 minutes, 6 times per day, 2 days per week. (Ex. 1, p. 4; Ex. 3, p. 5).
10. Mobility consists of assistance with movement in the appellant's living space and is not the ADL "transfers" which means, for example, assistance moving from a bed to a wheelchair or a wheelchair to a couch and also not the ADL "repositioning" which means assistance with occasional readjustments while in one position. (Testimony of the MassHealth representative).
11. The reason for the breakdown into a 5-day segment and a 2-day segment was that the appellant was in a day program during the weekdays and was at home on the weekends.

(Testimony of the appellant's representative).

12. MassHealth modified the assistance with mobility on the weekends by reducing the frequency from the requested 8 times per day to 6 times per day. (Ex. 1, p. 2; Ex. 3, pp. 4, 10).
13. The notes for mobility in the PA submission stated that the appellant required “Max A[ssistance] for room to room mobility in wheelchair. Dependent...on/off all surfaces in home d/t ataxic gait, essentially N[on]W[eight]B[earing] d/t de-conditioning, decreased G[eneral]M[edical]C[ondition], decreased balance, weakness...Consumer has w/c that she uses when outside of the home.” (Ex. 3, p. 11).
14. The appellant cannot walk or at all on her own and requires a wheelchair for mobility in the home. (Testimony of the appellant's representative; Ex. 1, p. 2).
15. On a typical day the appellant receives a mobility assist between 6 and 8 times during the weekend. (Testimony of the appellant's representative).

Analysis and Conclusions of Law

MassHealth may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties’ adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*). During the course of the hearing, MassHealth determined that the time for PROM for the lower extremities should be approved as requested. The appellant's representative did not object to this. Similarly, the appellant's representative agreed to the denial of time for shopping. For these reasons, regarding PROM for the lower extremities, and shopping, the appeal is DISMISSED.

The provider must request prior authorization reevaluation from the MassHealth agency as a prerequisite to continued payment for ongoing PCA services. (130 CMR 422.416). Reevaluations must be conducted at least annually, accurately represent the member’s need for physical assistance with ADLs and consider the member’s physical and cognitive condition and resulting functional limitations to determine ability to benefit from PCA services. (130 CMR 422.422(D)). MassHealth covers activity time performed by a PCA in aiding with the ADLs specified in the reevaluation, and as authorized by the MassHealth agency. (130 CMR 422.411(A)). ADLs include assistance with mobility, taking medications, bathing or grooming, dressing, passive range of motion exercises, eating, and toileting. (130 CMR 422.402; 130 CMR 422.410(A)). Mobility consists of physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment. (130 CMR 422.410(A)(1)).

A preponderance of the evidence does not support the provider’s request for 8 mobility assists, two days per week. The notes for mobility in the PA submission stated that the appellant required “Max A[ssistance] for room to room mobility in wheelchair. Dependent...on/off all surfaces in home d/t ataxic gait, essentially N[on]W[eight]B[earing] d/t de-conditioning, decreased G[eneral]M[edical]C[ondition], decreased balance, weakness...Consumer has w/c that she uses when outside of the home.” (Ex. 3, p. 11).

]C[ondition], decreased balance, weakness...Consumer has w/c that she uses when outside of the home.” The appellant's representative emphasized this point in his testimony, testifying the appellant's condition has deteriorated over the last year and she is completely unable to stand or walk because of physical deterioration and requires the use of a wheelchair in the home. Although this indicates the medical need for assistance with mobility, it does not indicate how frequently the appellant requires that assistance on a given day two days per week. The appellant's representative stated that the appellant typically requires between 6-8 assists with mobility per day on the weekend but did not describe more than three. The record does not presently support the need for more than 6 assists with mobility for 2 days per week.

With regards to assistance with mobility, the appeal is DENIED.

Order for MassHealth

None.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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