

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part, Dismissed in part	Appeal Number:	2178610
Decision Date:	01/12/2022	Hearing Date:	12/29/2021
Hearing Officer:	Paul C. Moore	Record Closed:	12/30/2021

Appellant Representatives:



MassHealth Representative:

Donna Burns, R.N., clinical appeals reviewer,
Optum (by 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:	Approved in part, Dismissed in part	Issue:	Prior Authorization, Personal Care Attendant Services
Decision Date:	01/12/2022	Hearing Date:	12/29/2021
MassHealth Rep.:	Ms. Burns	Appellant Reps.:	
Hearing Location:	Remote		

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 day/evening personal care attendant (PCA) services from the requested 61 hours, 45 minutes of day/evening PCA assistance per week, to 56 hours, 15 minutes of day/evening PCA assistance per week (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on November 12, 2021 (130 CMR 610.015; Exhibit 2). Modification of a PA request is valid grounds for appeal to BOH (130 CMR 610.032).¹

Action Taken by MassHealth

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

Issue

¹ The PCM agency also requested, and MassHealth authorized, 2 nighttime hours of PCA assistance for the appellant, every night.

Was MassHealth correct, pursuant to 130 CMR 422.410(A), (B) and (C), and 130 CMR 450.204(A), to modify the appellant's PA request for PCA services from the requested 61 hours, 45 minutes of PCA assistance per week (day/evening hours), to 56 hours, 15 minutes of day/evening PCA assistance per week?

Summary of Evidence

The MassHealth representative, who is a Registered Nurse consultant with Optum, testified by telephone that the appellant is a MassHealth member under age 65 who lives in the community. The MassHealth representative testified that the appellant has medical diagnoses of severe osteoarthritis, spondylitis arthritis, gastroparesis, Raynaud's Syndrome, osteoporosis, fibromyalgia and irritable bowel syndrome, among others. The MassHealth representative testified that the Boston Center for Independent Living ("BCIL"), a Personal Care Management ("PCM") services agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf on or about October 14, 2021, seeking 61 hours, 45 minutes of PCA assistance per week (day/evening hours), and two nighttime hours per night. The MassHealth representative testified that on October 25, 2021, MassHealth modified the requested time to 56 hours, 15 minutes of day/evening PCA assistance per week. The requested nighttime hours were approved in full. The time period for this PA request is October 30, 2021 through October 29, 2022 (Testimony, Exh. 3).

The MassHealth representative stated that MassHealth modified requested time for PCA assistance with the appellant's activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MassHealth representative testified that BCIL requested fifteen minutes of PCA assistance, every day, seven days per week for mobility.² The MassHealth representative testified that notes within the PCM agency evaluation submitted with this PA request reflect the following:

[Appellant] is generally able to carry out all aspects of mobility with the use of device such as a cane or walker indoors, and an electric wheelchair outdoors. Time above is given for time outdoors with PCA present to ensure safety with use of walker or safe use of wheelchair. [Appellant] goes outside for exercise and psychological uplift.

(Exh. 3, p. 10)

MassHealth modified requested PCA assistance time in this area to two minutes, once a day, seven days a week. The MassHealth representative testified that the assistance requested is for supervision for exercise, that MassHealth does not reimburse PCAs for assisting members to exercise, and that MassHealth believes "everyone should exercise." The time authorized by MassHealth (2 minutes per day, 7 days per week) is for assistance with the appellant's mobility indoors, such as getting into and out of bed (Testimony, Exh. 3).

² No PCA assistance time was requested for the appellant's transfers.

The appellant testified by telephone that she tries to exercise every day outdoors, weather permitting.³ She stated that she also has diagnoses of post-traumatic stress disorder (PTSD) and anxiety disorder, and that her psychiatrist recommends exercise for mood improvement. When she exercises, she can take smaller doses of her ordered psychiatric medications. She stated that when she goes outdoors, she sometimes needs a PCA to assist her to stand and to walk using her walker, and to assist her to dress before going outside. On other days, she is independent using her walker or electric wheelchair. She is at risk of losing fingers or toes due to her Raynaud's Syndrome, which causes a loss of circulation to her extremities when it is cold outside. She added that she has a service dog, and that her PCA assists to handle the dog when outdoors. She also asserted that exercise is a treatment for both arthritis and fibromyalgia. On days when she is in pain, she may spend only five or ten minutes outside (Testimony).

The MassHealth representative testified that BCIL requested, on the appellant's behalf, fifteen minutes of PCA assistance, every day, seven days a week for an evening quick wash. MassHealth modified requested PCA assistance time in this area to zero. The MassHealth representative noted that MassHealth already approved forty minutes per day, every day, seven days per week for a PCA to assist the appellant with bathing/showering, and also approved an additional ten minutes once a day, five days a week for a PCA to assist the appellant to wash her hair (Testimony, Exh. 3, p. 12). The MassHealth representative stated that PCA assistance time for an evening quick wash is usually reserved for members who have incontinence, and noted that the appellant does not (Testimony).

The appellant testified that she uses pain patches on her torso, and that she needs a quick wash in the evening to remove the patch adhesive stuck to her skin. Also, she sweats excessively because she wears warm clothes (such as wool), especially outdoors, due to her Raynaud's Syndrome, and needs a second shower daily. In response to this testimony, the MassHealth representative agreed to authorize five minutes per evening, seven days a week, for a quick wash, which the appellant agreed was acceptable to her.

Next, the MassHealth representative testified that BCIL requested, on the appellant's behalf, three minutes, twice per day, seven days per week for PCA assistance with the appellant's hair care. MassHealth modified this requested PCA assistance time to once per day, every day, seven days per week, as PCA assistance with hair care is typically authorized by MassHealth for members only once a day (Testimony, Exh. 3, p. 13). The appellant testified that she has very long hair, cannot grip a hairbrush, and that she typically needs assistance with her hair care twice a day (Testimony).

In response to this testimony, the MassHealth representative agreed to authorize the requested three minutes, twice per day, seven days per week for grooming (hair care).

Next, the MassHealth representative testified that BCIL requested, on the appellant's behalf, one hundred nineteen (119) minutes per week of PCA assistance with maintenance of the appellant's medical equipment, including her continuous positive airway pressure (CPAP) machine, electric

³ The appellant's advocate from BCIL, Mr. Forman, also testified by telephone.

wheelchair and walker. MassHealth modified the requested time in this area to forty-five (45) minutes per week (Testimony, Exh. 3, p. 19).

The appellant testified that in addition to these items of medical equipment, she also uses custom hand-braces, with Velcro straps. She testified that these are scrubbed and washed by her PCA every day. In response to this testimony, the MassHealth representative stated that she would authorize seventy (70) minutes per week of PCA assistance for maintenance of the appellant's medical equipment. The appellant and her advocate agreed to this authorization of time (Testimony).

The final modification about which the MassHealth representative was for an IADL, time for assistance with the required PCA billing and paperwork. BCIL requested 35 minutes per week for this IADL each week. MassHealth modified requested time in this area to ten minutes per week. Notes in the PCA evaluation submitted by BCIL indicate that due to the appellant's hand limitations, she requires PCA assistance with all paperwork (Testimony, Exh. 3, p. 25).

The appellant and her advocate agreed to this modification of PCA assistance time, *to wit*, ten minutes of PCA assistance per week.

At the close of the hearing, at the appellant's request, the hearing officer agreed to keep the record of this appeal open for a day for the appellant to submit a letter from a psychiatrist explaining the medical necessity for outdoor exercise and the need for PCA assistance with same.⁴

After the hearing concluded, on the same date, the hearing officer received via e-mail from Mr. Forman a copy of a December 22, 2021 letter from Polina Teslyar, M.D., an attending psychiatrist at Brigham and Women's Hospital, which states in relevant part:

[The appellant] has been under my care for the management of [PTSD], generalized anxiety disorder, and a major depressive disorder for several years. Until recent months she has been very stable in her illness and doing well. In the setting of stress of COVID pandemic as well as conflict with the management company at her residence she has experienced significant worsening of her symptoms and has required more intensive treatment.

In addition to her mental health, [the appellant] is also in medical care for her Raynaud's disease and recently underwent lung surgery for management of cancer.

. . . [I]n her current residence she has access to an indoor swimming pool that allows her to continue daily exercise when the weather outside becomes too cold for her Raynaud's disease. Additional unique features include indoor parking, it is in very close proximity to a park, has a large amount of natural sunlight, allows her service

⁴ The hearing officer gave the MassHealth representative an opportunity to review and comment in writing on the letter from the appellant's psychiatrist if she chose to do so, but she declined this opportunity.

dog, and is an ADA compliant unit. These features are very significant to [the appellant] as they support her ability to follow my recommendations in the treatment of her mental disease as well as those of her primary care physician in the management of Raynaud's disease. These include daily exercise, exposure to sunlight, exposure to fresh air. The proximity allows her to be able to go outdoors daily but also be able to retreat inside quickly in case of Raynaud's flare due to the cold weather. . . .

(Exh. 5)

Findings of Fact

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

1. The appellant is under age 65, and lives in the community (Testimony).
2. The appellant's medical diagnoses include severe osteoarthritis, spondylitis arthritis, gastroparesis, Raynaud's Syndrome, osteoporosis, fibromyalgia, irritable bowel syndrome, PTSD, anxiety disorder, major depressive disorder, and a history of cancer (Testimony, Exh. 3, Exh. 5).
3. BCIL, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf on or about October 14, 2021, seeking 61 hours, 45 minutes of PCA assistance per week (day/evening hours), and two nighttime hours per night (*Id.*).
4. By notice dated October 25, 2021, MassHealth modified the requested time to 56 hours, 15 minutes of day/evening PCA assistance per week., and two nighttime hours per night, every night (Exh. 1).
5. The time period for this PA request is October 30, 2021 through October 29, 2022 (Testimony, Exh. 3).
6. The appellant filed a timely appeal of this notice with the BOH on November 12, 2021 (Ex. 2).
7. BCIL requested fifteen minutes of PCA assistance, every day, seven days per week for mobility/transfers (Exh. 3).
8. MassHealth modified requested PCA assistance time in this area to two minutes, once a day, seven days a week for indoor mobility/transfers (Testimony, Exh. 1).
9. Notes within the PCM agency evaluation submitted with this PA request reflect as follows: "[Appellant] is generally able to carry out all aspects of mobility with the use of device such as a cane or walker indoors, and an electric wheelchair outdoors. Time above [*i.e.*, mobility] is

given for time outdoors with PCA present to ensure safety with use of walker or safe use of wheelchair. [Appellant] goes outside for exercise and psychological uplift” (Exh. 3, p. 10).

10. The appellant tries to exercise outdoors every day, weather permitting, for up to an hour (Testimony).
11. Sometimes, when experiencing a lot of pain, the appellant spends only five or ten minutes outdoors (Testimony).
12. When the appellant goes outdoors, she sometimes needs a PCA to assist her to stand and to walk using her walker, and to assist her to dress before going outside (Testimony).
13. On other days, the appellant is independent outdoors using her walker or electric wheelchair (Testimony).
14. A December 22, 2021 letter from Polina Teslyar, M.D., an attending psychiatrist at Brigham and Women’s Hospital, states that for managing the appellant’s mental health diagnoses, she recommends “daily exercise, exposure to sunlight, exposure to fresh air” (Exh. 5).
15. The appellant’s PCA also attends to the needs of the appellant’s service dog (Testimony).
16. BCIL requested, on the appellant’s behalf, fifteen minutes of PCA assistance, every day, seven days a week for an evening quick wash (Exh. 3).
17. MassHealth modified requested time for an evening quick wash to zero minutes (Exh. 1).
18. The appellant needs an evening quick wash to scrub adhesives from her torso and to clean up if she is sweating excessively (Testimony).
19. In response to this testimony, MassHealth agreed to authorize five minutes per evening, seven days a week, for an evening quick wash (Testimony).
20. BCIL requested, on the appellant’s behalf, three minutes, twice per day, seven days per week for PCA assistance with the appellant’s hair care (Exh. 3).
21. MassHealth modified requested PCA assistance time in the area of hair care to three minutes, once per day, seven days per week (Exh. 1).
22. The appellant has very long hair, cannot grip a hairbrush, and typically needs assistance with her hair care twice a day (Testimony).
23. In response to this testimony, MassHealth agreed to authorize the requested three minutes, twice per day, seven days per week for PCA assistance with the appellant’s hair care (Testimony).

24. BCIL requested, on the appellant's behalf, one hundred nineteen (119) minutes per week of PCA assistance with maintenance of the appellant's medical equipment, including her CPAP machine, electric wheelchair and walker (Exh. 1).
25. MassHealth modified requested PCA assistance time for maintenance of medical equipment to 45 minutes per week (Exh. 1).
26. In addition to the aforementioned items of medical equipment, the appellant also uses custom hand-braces, with Velcro straps, which are scrubbed and washed by her PCA every day (Testimony).
27. In response to this testimony, MassHealth agreed to authorize seventy (70) minutes per week of PCA assistance for maintenance of the appellant's medical equipment (Testimony).
28. BCIL requested 35 minutes each week for assistance with the PCA's billing and paperwork, an IADL (Exh. 3).
29. MassHealth modified requested time in this area to ten minutes once per week (Exh. 1).
30. At hearing, the appellant and her advocate agreed to accept the authorization of ten minutes per week of PCA assistance with the PCA billing and paperwork (Testimony).

Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (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; (2) the member's disability is permanent or chronic in nature; (3) the member 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; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned instrumental activities of daily living.

Pursuant to 130 CMR 450.204(A), 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 the 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.

Next, pursuant to 130 CMR 422.412, "Noncovered Services:"

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;**
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;**
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

(Emphases added)

Grooming (hair care), Evening Quick Wash, Maintenance of Medical Equipment, and Assistance with PCA paperwork

At hearing, MassHealth agreed to revisit its modifications to PCA assistance time in the areas of grooming (hair care), evening quick wash, and maintenance of medical equipment. MassHealth agreed to authorize the following amounts of PCA assistance time:

Grooming (hair care): three minutes, twice a day, every day

Evening Quick Wash: five minutes, once a day, every day

Maintenance of medical equipment: 70 minutes per week

Also, at hearing, the appellant agreed to withdraw her challenge to the MassHealth modification of time for assistance with PCA paperwork (ten minutes per week was authorized).

Therefore, these portions of the appeal are DISMISSED.

PCA Assistance with Mobility/Transfers/Exercise

The PCM agency, BCIL, requested fifteen minutes of PCA assistance for the appellant, every day, seven days per week for mobility. This request included time for assistance with the appellant's outdoor activities, using a walker or wheelchair. MassHealth modified this requested time to two minutes, once per day, seven days a week.

Of note, no separate PCA assistance time was requested for the appellant's transfers, such as into and out of bed.

Pursuant to 130 CMR 422.412(A), above, MassHealth does not reimburse PCAs for assistance with a member's "recreational services." The question presented is whether the appellant's daily trips outside her apartment may be considered "recreational" or whether they are, in fact, medically necessary as part of her treatment for her psychiatric conditions.

The appellant credibly testified that she strives to spend an hour outdoors when the weather is good, but on bad days, she may spend only five to ten minutes outside. She noted that her PCA assists her with her walker and may assist her to stand up when she needs help. She also noted that her PCA assists in guiding the appellant's service dog when outside.

A letter from the appellant's psychiatrist, although apparently written for the purpose of allowing the appellant to keep her current city-owned apartment, does address the psychiatrist's plan of care for the appellant's diagnoses. Notably, the plan of care includes "daily exercise, exposure to sunlight, and exposure to fresh air."

There is no dispute that the appellant needs help transferring into and out of bed. Further, there is evidence to support that the appellant does require daily trips outdoors for better management of her health and state of mind, as ordered by her psychiatrist.

The appellant requested fifteen minutes of PCA assistance every day, seven days a week for these trips. It is clear that she does not spend fifteen minutes outside every day, however, particularly in inclement weather and/or when her pain is severe.

Although the appellant understandably has a medical service dog, a PCA is paid to assist a MassHealth member with his or her ADLs, and is not paid to assist or supervise a service dog with such activities.

Therefore, in consideration of the above, I determine that it is medically necessary for the appellant to receive ten minutes of PCA assistance daily, seven days a week, for her mobility and transfers, both inside her apartment and on her daily trips outside her apartment. Therefore, MassHealth's decision to modify requested PCA assistance time in this area to two minutes per day, every day was incorrect.

This portion of the appeal is APPROVED IN PART.

Order for MassHealth

Rescind notice of October 25, 2021. Send notice to the appellant authorizing her for 59 hours of day/evening PCA assistance per week (which includes all adjustments agreed on at hearing and ten minutes per day, every day of PCA assistance with mobility/transfers), and two nighttime hours per night, for the PA period October 30, 2021 through October 29, 2022.

Send notice of implementation only; do not include appeal rights.


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.

Paul C. Moore
Hearing Officer
Board of Hearings



cc: Optum appeals representative