

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Approved in Part	Appeal Number:	2178655
Decision Date:	02/15/2022	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; Approved in Part	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	02/15/2022	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 November 2, 2021, MassHealth modified the appellant's prior authorization (PA) request for PCA services. (See 130 CMR 422.417 and Exhibit 1, pp. 3-5; Ex. 5, pp. 4-6). The appellant filed this appeal in a timely manner on November 15, 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).

On November 17, 2021, the Board of Hearings sent the appellant's representative a letter requesting that she submit a document giving her authority to represent the appellant at the hearing. (Ex. 2). On November 24, 2021, the Board of Hearing received a copy of Durable Power of Attorney naming the appellant's representative as the attorney in fact. (Ex. 3).

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 an intellectual disability. (Ex. 5, p. 8). On October 21, 2021, the personal care management agency (the provider) submitted a PA request for a reevaluation of PCA services. (Ex. 5, pp. 7-32). The provider requested 37.5 hours of day and evening services per week and two hours of services per night for one year. (Ex. 1, p. 5; Ex. 5, pp. 6, 7-32). In a written notice dated November 2, 2021, MassHealth approved 27.5 hours of day and evening services per week and two hours of services per night from December 21, 2021 through December 20, 2022. (Ex. 1, pp. 3-5; Ex. 5, pp. 4-6). The difference in hours between what was requested and what was approved consisted of modifications to the allotment of time for six activities of daily living (ADLs) and four instrumental activities of daily living (IADL): nail care (ADL); oral care (ADL); shaving (ADL); application of deodorant and ear cleaning (ADL); menses care (ADL); extra skin care (ADL); meal preparation (IADL); laundry (IADL); housekeeping (IADL); and shopping (IADL). (Ex. 1, p. 4; Ex. 5, pp. 6, 13, 18-19, 23-25). During the course of the hearing, the MassHealth representative approved the time the provider requested for nail care¹, shaving², application of deodorant and ear cleaning³, meal preparation⁴, laundry⁵, housekeeping⁶, and shopping⁷. (Ex. 5, pp. 12). The appellant's representative accepted MassHealth's modification the time requested for menses care⁸. (Ex. 1, p. 5; Ex. 5, p. 6). The MassHealth representative and the appellant's representative could not reach agreement on the following two ADLs.

1. Oral care

The provider requested 10 minutes, two times per day, seven days per week for oral care. (Ex. 5, p. 13). MassHealth determined that the time requested was longer than ordinarily required for a person with the appellant's physical needs and modified it to three minutes, two times per day, seven days per week. (Ex. 1, pp. 4, 5; Ex. 5, pp. 5, 6). The MassHealth representative stated that the time granted for oral care was standard and was usually sufficient. The appellant's representative stated that the appellant was extremely physically resistant to assistance with tooth brushing. The appellant's representative stated that the appellant was extremely uncooperative and had the physical strength to make accomplishing this task difficult. The appellant's representative stated that it took far longer than the 10 minutes requested to actually complete this task. The MassHealth representative stated that she would be willing to adjust the modification to six minutes, two times per day, seven days per week but the appellant's representative would not agree to this adjustment.

2. Extra skin care

The provider requested 10 minutes, two times per day, seven days per week for extra skin care. (Ex. 5,

¹ 15 minutes per week. (Ex. 5, p. 13).

² 20 minutes per week. (Id.).

³ Five minutes, one time per day, seven days per week. (Id.).

⁴ 95 minutes per day, seven days per week. (Ex. 5, p. 23).

⁵ 90 minutes per week. (Ex. 5, p. 24).

⁶ 90 minutes per week. (Id.).

⁷ 90 minutes per week. (Ex. 5, p. 25).

⁸ 15 minutes per week. (Ex. 1, p. 5; Ex. 5, p. 6).

p. 19). MassHealth determined that the time requested was longer than ordinarily required for someone with the appellant's physical needs and modified this to five minutes, one time per day, seven days per week. (Ex. 1, pp. 4, 5; Ex. 5, pp. 5, 6). The MassHealth representative stated that there was very little description in the provider submitted materials to indicate what this activity encompassed. The appellant's representative stated that this involved application of Valchor gel for rashes, Denavir and Abreva creams for cold sores. The appellant's representative stated that the appellant's cold sores and rashes occur more frequently than intermittent break-through infections. The appellant's representative stated that the appellant requires eye drops, and application of Vaseline to her eyelids because of dryness. Finally, the appellant has face lotion and hand cream applied after bathing. The appellant's representative had not timed The MassHealth representative stated that the provider did not list any of these medications/treatments on the appellant's medication list and recommended that the appellant's representative make sure they did so on future submissions. Based on the appellant's representative's testimony, the MassHealth representative was willing to adjust this modification to five minutes, two times per day, seven days per week, but the appellant's representative would not agree to this adjustment.

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 an intellectual disability. (Ex. 5, p. 8).
2. On October 21, 2021, the provider submitted a PA request for a reevaluation of PCA services. (Ex. 5, pp. 7-32).
3. The provider requested 37.5 hours of day and evening services per week and two hours of services per night for one year. (Ex. 1, p. 5; Ex. 5, pp. 6, 7-32).
4. In a written notice dated November 2, 2021, MassHealth approved 27.5 hours of day and evening services per week and two hours of services per night from December 21, 2021 through December 20, 2022. (Ex. 1, pp. 3-5; Ex. 5, 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 six activities of daily living (ADLs) and four instrumental activities of daily living (IADLs): nail care (ADL); oral care (ADL); shaving (ADL); application of deodorant and ear cleaning (ADL); menses care (ADL); extra skin care (ADL); meal preparation (IADL); laundry (IADL); housekeeping (IADL); and shopping (IADL). (Testimony of the MassHealth representative; Ex. 1, p. 4; Ex. 5, pp. 6, 13, 18-19, 23-25).
6. After considering the appellant's representative's testimony, the MassHealth representative approved the time the provider requested for nail care, shaving, application of deodorant and ear cleaning, meal preparation, laundry, housekeeping, and shopping. (Ex. 5, pp. 12; Testimony of the MassHealth representative; Testimony of the appellant's representative).
7. The appellant's representative accepted MassHealth's modification to the time requested for

menses care. (Ex. 1, p. 5; Ex. 5, p. 6; Testimony of the MassHealth representative).

8. The MassHealth representative and the appellant's representative could not reach agreement concerning the time for oral care and extra skin care. (Testimony of the MassHealth representative; Testimony of the appellant's representative).
9. Oral care:
 - a. The provider requested 10 minutes, two times per day, seven days per week for oral care. (Ex. 5, p. 13).
 - b. MassHealth determined that the time requested was longer than ordinarily required for a person with the appellant's physical needs and modified it to three minutes, two times per day, seven days per week. (Ex. 1, pp. 4, 5; Ex. 5, pp. 5, 6).
 - c. The appellant was extremely physically resistant, uncooperative and had the physical strength to make accomplishing tooth brushing difficult. (Testimony of the appellant's representative).
 - d. It takes far longer than 10 minutes to accomplish tooth brushing. (Testimony of the appellant's representative).
 - e. The MassHealth representative offered to adjust the modification to six minutes, two times per day, seven days per week but the appellant's representative would not agree to this adjustment. (Testimony of the MassHealth representative; Testimony of the appellant's representative).
10. Extra skin care:
 - a. The provider requested 10 minutes, two times per day, seven days per week for extra skin care. (Ex. 5, p. 19).
 - b. MassHealth determined that the time requested was longer than ordinarily required for someone with the appellant's physical needs and modified this to five minutes, one time per day, seven days per week. (Ex. 1, pp. 4, 5; Ex. 5, pp. 5, 6).
 - c. This task included this involved application of Valchor gel for rashes, Denavir and Abreva creams for cold sores, eye drops, Vaseline to eyelids, face lotion and hand cream. (Testimony of the appellant's representative).
 - d. None of these conditions and treatments were described in the provider submitted material. (Testimony of the MassHealth representative).
 - e. Based on the appellant's representative's testimony, the MassHealth representative was willing to adjust this modification to five minutes, two times per day, seven days per week, but the appellant's representative would not agree to this adjustment. (Testimony of the MassHealth representative; 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.*). After considering the appellant's representative's testimony, the MassHealth representative approved the time the provider requested for nail care, shaving, extra skin care, meal preparation, laundry, housekeeping, and shopping. The appellant's representative did not object to this. The appellant's representative agreed to the modification to the time requested for menses care. Regarding these three ADLs and four IADL's 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)). Assistance with oral care and extra skin care are both considered ADLs in that they are performed by a PCA to physically assist the appellant.

The appellant's representative has shown by a preponderance of the evidence that the time the provider requested for oral care was reasonable under the circumstances. It must be stated initially that in the material submitted to MassHealth the provider did not describe in any detail the reason it requested 10 minutes, two time per day, seven days per week. With so little information, MassHealth reasonable concluded that the time requested was excessive and modified the requested time to three minutes, two times per day, seven days per week. At the hearing, however, the appellant's representative described the physical difficulties of corralling the appellant in order to provide oral care. The appellant's representative stated that the appellant is physically resistant and uncooperative. The appellant's representative stated it takes far longer than 10 minutes to accomplish this task. It is likely that this vaguely described longer amount of time would include a large amount non-compensable "cueing, prompting, supervision, guiding, or coaching".⁹ It is also reasonable to conclude, however, that the active time assisting the appellant could amount to 10 minutes. The MassHealth representative conceded that more than three minutes was necessary, although she only offered to adjust the time allotted to six minutes. Again, based on the appellant's representative's description of the appellant's behavior, 10 minutes does not seem unreasonable. With regard to oral care, the appeal is APPROVED.

A preponderance of the evidence, however, does not support the entirety of the time the provider requested for extra skin care. The appellant's representative stated that a number of gels, creams, ointments, eye drops, and lotions needed to be variously applied to the appellant. The appellant's

⁹ See 130 CMR 422.412(C).

representative did not describe in any sort of detail the amount of time application of these substances could take. The appellant's representative was also vague as to how often some of the substances were applied. For instance, there seems to be daily application of Vaseline, hand cream and face lotion and frequent (but not daily) application of Valchor gel for rashes, Denavir and Abreva creams for cold sores. The appellant's representative also did not state there was any physical resistance to the application of these substances. After considering the appellant's representative's testimony, the MassHealth representative offered to adjust the modification to five minutes, two times per day, seven days per week. This conclusion seems reasonable under the described circumstances, and will be adopted here. With regard to extra skin care, the appeal is APPROVED IN PART.

Order for MassHealth

Issue a new determination without appeal rights:

1. The provider requested time for nail care, oral care, shaving, application of deodorant and ear cleaning, meal preparation, laundry, housekeeping, and shopping will be APPROVED as requested;
2. The modification for extra skin care will be adjusted to five minutes, two times per day, seven days per week;
3. The modification for menses care will remain as stated in the November 2, 2021 MassHealth notice; and
4. All changes will be effective from December 21, 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.

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