

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2178669

Decision Date: 01/26/2022

Hearing Date: 12/06/2021

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:




Appearance for MassHealth:

Donna Burns, RN, Optum



*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 Services
Decision Date:	01/26/2022	Hearing Date:	12/06/2021
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center		

Authority

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

Jurisdiction¹

Through a notice dated 11/01/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 59:00 day/evening hours per week plus 2 daily night time attendant hours to 44:30 day/evening hours per week plus 2 daily night time attendant hours (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 11/15/2021 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request for PCA services was received on appellant's behalf on 10/22/2021 from her PCA provider, The Northeast ILP, Inc. ("provider"), and is a re-evaluation request for the dates of service of 11/02/2021 to 11/01/2022. In the prior authorization request for PCA services, the provider requested 59:00 day/evening hours per week plus 2 daily night time attendant hours. The appellant is in her mid-50s and her primary diagnosis affecting her ability to function independently is Ehlers-Danlos Syndrome (Exhibit 4).

The Optum representative testified that MassHealth modified the PCA request to 44:30 day/evening hours per week plus 2 daily night time attendant hours. Modifications were made to the request for PCA services that include modifications in the activity of daily living (ADL) tasks of passive range of motion exercises; bathing; PM wash; grooming/haircare; toileting; night bladder care; bowel care; and other healthcare needs.

Passive Range of Motion Exercises (PROM)

The appellant's PCA provider requested 30 minutes per day for assistance with passive range of motion exercises for all extremities. The provider noted that the appellant needs assistance with this task for all joints to maintain flexibility, help with spasms, decrease pain, increase circulation, prevent contractures due to RA, EDS, POTS, autonomic polyneuropathy, poor pain control, poor activity tolerance, SOB with minimum exertion (talking can make her SOB) poor standing and walking tolerance, high falls risk, chronic anxiety and depression, muscle wasting and collagen disorder.

MassHealth denied the request for assistance with PROM exercises. The MassHealth representative testified that PROM is only indicated when a member is not able to independently move her own limbs. In this case, the appellant is able to move her extremities, so the PROM exercises are not medically necessary.

The appellant responded that she is not able to do exercises on her own if she is having a bad day. She is not able to do the PROM exercises without a PCA.

Bathing

The appellant's provider requested 50 X 1 X 7² for assistance with bathing plus 15 X 1 X 7 for a quick wash. MassHealth initially modified the request to 40 X 1 X 7 and 5 X 1 X 7, respectively; however, after hearing testimony from the appellant, MassHealth restored all time, as requested, in this area.

Grooming/Haircare

The appellant's provider requested 7 X 1 X 7 for assistance with grooming/haircare. MassHealth initially modified the request to 5 X 1 X 7; however, after hearing testimony from the appellant, MassHealth restored all time, as requested, in this area.

Toileting

The appellant's provider requested 5 X 10 X 7 and 10 X 3 X 7 for assistance bladder care. The provider requested 15 X 4 X 7 for assistance with bowel care. MassHealth initially modified the request for assistance with bladder care to 8 X 6 X 7 and assistance with bowel care to 12 X 2 X 7. After hearing testimony at the fair hearing, MassHealth adjusted the modification to 15 X 2 X 7 for bowel care. The appellant agreed that this time would be acceptable and would meet her toileting needs.

Other Healthcare Needs/Oxygen

The appellant's provider requested 5 X 1 X 7 for assistance with oxygen. The provider noted that the appellant needs assistance with oxygen machine, tubing, change tubing, filter, and fill humidifier pending PCP approval. MassHealth denied the request for assistance in this area. The MassHealth representative testified that there is no indication that the PCP has approved this. Once the PCP approves it, the provider may submit an adjustment request to MassHealth. The appellant understood and agreed.

Findings of Fact

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 10/22/2021 from her PCA provider, The Northeast ILP, Inc. ("provider"),

² PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

and is a re-evaluation request for the dates of service of 11/02/2021 to 11/01/2022 (Testimony; Exhibit 4).

2. In the prior authorization request for PCA services, the provider requested 59:00 day/evening hours per week plus 2 daily night time attendant hours (Testimony; Exhibit 4).
3. The appellant is in her mid-50s and her primary diagnosis affecting her ability to function independently is Ehlers-Danlos Syndrome (Testimony; Exhibit 4).
4. MassHealth modified the PCA request to 44:30 day/evening hours per week plus 2 daily night time attendant hours (Testimony; Exhibits 1 and 4).
5. The appellant's PCA provider requested 30 minutes per day for assistance with passive range of motion (PROM) exercises for all extremities. The provider noted that the appellant needs assistance with this task for all joints to maintain flexibility, help with spasms, decrease pain, increase circulation, prevent contractures due to RA, EDS, POTS, autonomic polyneuropathy, poor pain control, poor activity tolerance, SOB with minimum exertion (talking can make her SOB) poor standing and walking tolerance, high falls risk, chronic anxiety and depression, muscle wasting and collagen disorder (Testimony; Exhibits 1 and 4).
6. MassHealth denied the request for assistance with PROM exercises (Testimony; Exhibits 1 and 4).
7. The appellant's provider requested 50 X 1 X 7³ for assistance with bathing plus 15 X 1 X 7 for a quick wash (Testimony; Exhibit 4).
8. MassHealth initially modified the request for assistance with bathing to 40 X 1 X 7 and 5 X 1 X 7, respectively; however, after hearing testimony from the appellant, MassHealth restored all time, as requested, in this area (Testimony; Exhibit 4).
9. The appellant's provider requested 7 X 1 X 7 for assistance with grooming/haircare (Testimony; Exhibit 4).
10. MassHealth initially modified the request for assistance with grooming/haircare to 5 X 1 X 7; however, after hearing testimony from the appellant, MassHealth restored all time, as requested, in this area (Testimony; Exhibit 4).
11. The appellant's provider requested 5 X 10 X 7 and 10 X 3 X 7 for assistance bladder care. The provider requested 15 X 4 X 7 for assistance with bowel care (Testimony; Exhibit 4).

³ PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

12. MassHealth initially modified the request for assistance with bladder care to 8 X 6 X 7 and assistance with bowel care to 12 X 2 X 7. After hearing testimony at the fair hearing, MassHealth adjusted the modification to 15 X 2 X 7 for bowel care (Testimony; Exhibit 4).
13. The appellant agreed that the time approved for assistance with toileting would be acceptable and would meet her toileting needs. (Testimony; Exhibits 1 and 4).
14. The appellant's provider requested 5 X 1 X 7 for assistance with oxygen. The provider noted that the appellant needs assistance with oxygen machine, tubing, change tubing, filter, and fill humidifier pending PCP approval (Testimony; Exhibit 4).
15. MassHealth denied the request for assistance with assistance with oxygen. The MassHealth representative testified that there is no indication that the PCP has approved this. Once the PCP approves it, the provider may submit an adjustment request to MassHealth. The appellant understood and agreed (Testimony; Exhibit 4).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA 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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

- (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/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 the MassHealth agency as being instrumental to the health care of the member.
- (C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.
- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
 - (2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth modified the appellant's request for PCA time. In the areas of bathing and grooming, MassHealth restored all time requested as a result of the testimony presented by the appellant's mother. As a result, the appeal is dismissed with regard to the modifications made in those areas.

In the area of toileting, MassHealth initially modified the request for assistance with bladder care to 8 X 6 X 7 and assistance with bowel care to 12 X 2 X 7. After hearing testimony at the fair hearing, MassHealth adjusted the modification to 15 X 2 X 7 for bowel care. The appellant agreed that the approved time would meet her toileting needs. This portion of the appeal is denied.

With regard to the request for assistance in the area of oxygen assistance, MassHealth denied the request because it was made pending the approval of the appellant's PCP, which has not yet been obtained. The appellant understood that MassHealth would reconsider a future request after such approval was obtained by the PCP and she agreed with the denial of time for assistance in this area.

Appellant's PCA provider requested 30 minutes a day, seven days per week for PROM assistance. MassHealth denied the time for assistance with PROM based on medical necessity. The MassHealth representative, a registered nurse, testified credibly and convincingly that standards of medical practice contraindicate passive range of motion for a member who is independently able to move their own extremities. Further, the appellant acknowledged that she is able to independently move her upper and lower extremities, though she has difficulty doing so at times. MassHealth's denial of PCA time for passive range of motion exercise is supported by the evidence in the record, as well as the regulations. Accordingly, this portion of the appeal is denied.

For the foregoing reasons, this appeal is dismissed in part; denied in part.

Order for MassHealth

Restore all time requested time in the areas of bathing and grooming. In the area of

toileting, approve 8 X 6 X 7 for assistance with bladder care and 15 X 2 X 7 for assistance with bowel care. With regard to all other modifications, 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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