

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part;
Dismissed in part

Appeal Number: 2178761

Decision Date: 02/08/2022

Hearing Date: 01/03/2022

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:	Approved in part; Denied in part; Dismissed in part	Issue:	Personal Care Attendant Services
Decision Date:	02/08/2022	Hearing Date:	01/03/2022
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	[REDACTED]
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.

Jurisdiction¹

Through a notice dated 10/27/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 70:45 day/evening hours per week plus 2 daily night time attendant hours to 65:15 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 11/18/2021 (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.

A fair hearing was scheduled to take place on 12/31/2021; however, it was rescheduled to 01/03/2022 by the Board of Hearings for reasons unknown to this hearing officer (Exhibit 3).

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 10/13/2021 from his PCA provider, Tempus, Inc. ("provider"), and is a re-evaluation request for the dates of service of 11/03/2021 to 11/02/2022. In the prior authorization request for PCA services, the provider requested 70:45 day/evening hours per week plus 2 daily night time attendant hours. The appellant is in his 20's and has primary diagnoses of cerebral palsy and spastic quadriplegia (Exhibit 4).

The Optum representative testified that MassHealth modified the PCA request to 65:15 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 grooming-shaving, other grooming, undressing, and bladder care. A modification was also made in the instrumental activity of daily living (IADL) task of assistance with laundry.

Grooming - Shaving

The appellant's PCA provider requested 10 minutes, one time per day, seven days per week (10 X 1 X 7)² per day for assistance with shaving. MassHealth initially modified the request to 5 X 1 X 7; however, after hearing testimony from the appellant's representative during the hearing, MassHealth fully restored all time requested for assistance with this task.

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.

Grooming - Other

The appellant's provider requested 1 X 18 X 7 for assistance with other grooming; specifically, for assistance with wiping secretions. MassHealth initially modified the request to 1 X 10 X 7; however, after hearing testimony from the appellant, MassHealth restored all time as requested in this area.

Undressing

The appellant's provider requested 15 X 1 X 7 and 8 X 1 X 7 for assistance with undressing. The provider noted that the appellant is dependent for all aspects of dressing/undressing due to increased spasticity and rigidity. He is dependent for gathering, don/doff day clothes: undershirt, shirt, boxer briefs, pants, socks, and shoes. Lower body clothes are don/doff while in bed, Upper body clothes are don/doff while in chair. Time allotted is for am: doff bedclothes/don day clothes and for pm: doff day clothes and don bedclothes. Consumer changes into heated knee-high socks at times throughout the day due to lower extremity becoming cold despite time of year and weather conditions.

MassHealth approved the request for 15 X 1 X 7 but modified the second request to 5 X 1 X 7. The MassHealth representative testified that the time requested was to put socks on the appellant and that the time requested is longer than ordinarily required for this task for someone with the appellant's conditions.

The appellant's representative testified that the appellant has spasms and his hands do not open easily. The PCA needs to go slowly. She stated that she has observed the PCA assist the appellant with this task and it takes 8 – 10 minutes. She testified that she calculated the time necessary for undressing by using the time she needed to leave. She knows it was 8 – 10 minutes.

Bladder Care

The appellant's provider requested 10 X 3 X 7 for assistance with bladder care to use the urinal and 15 X 3 X 7 for assistance with bladder care to use the toilet. The provider noted that the appellant requires physical assistance with toilet hygiene; clothing management; use of urinal; and regular transfers. The appellant reports he will let the PCA know when he needs to use the bathroom. He reports he uses both the urinal and toilet depending on urgency. He is dependent to hold urinal, empty, rinse, replace and adjust clothing. The appellant is dependent to physical lift transfer from wheelchair to bed to remove clothing, transfer onto commode chair, wheel into bathroom over toilet, wheel back into bedroom, transfer back onto bed, provide hygiene, replace lower body clothing and adjust, and physical lift transfer back into wheelchair and apply safety belt and adjust trunk.

MassHealth modified the requests to 5 X 3 X 7 and 10 X 3 X 7, respectfully. The MassHealth representative testified that all time for bowel care was approved as

requested; however, the time for bladder care was modified because it is longer than ordinarily required for someone with the appellant's needs.

The appellant's representative testified that she had no further information about the appellant's need for assistance with this task, so she agreed to the modification "for now."

Laundry

The appellant's provider requested 75 X 1 X 1 for assistance with laundry. MassHealth initially modified the request to 60 X 1 X 1; however, after hearing testimony at the hearing, MassHealth restored all time as requested for this task.

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 10/13/2021 from his PCA provider, Tempus, Inc. ("provider"), and is a re-evaluation request for the dates of service of 11/03/2021 to 11/02/2022 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 70:45 day/evening hours per week plus 2 daily night time attendant hours (Testimony; Exhibit 4).
3. The appellant is in his 20's and has primary diagnoses of cerebral palsy and spastic quadriplegia (Testimony; Exhibit 4).
4. MassHealth modified the PCA request to 65:15 day/evening hours per week plus 2 daily night time attendant hours (Testimony; Exhibits 1 and 4).
5. The appellant's PCA provider requested 10 X 1 X 7 per day for assistance with shaving (Testimony; Exhibits 1 and 4).
6. MassHealth initially modified the request for assistance with shaving to 5 X 1 X 7; however, after hearing testimony from the appellant's representative during the hearing, MassHealth fully restored all time requested for assistance with this task (Testimony; Exhibits 1 and 4).
7. The appellant's provider requested 1 X 18 X 7 for assistance with other grooming; specifically, for assistance with wiping secretions (Testimony; Exhibit 4).
8. MassHealth initially modified the request for assistance with other grooming to 1 X 10 X 7; however, after hearing testimony from the appellant, MassHealth restored

all time as requested in this area (Testimony; Exhibits 1 and 4).

9. The appellant's provider requested 15 X 1 X 7 and 8 X 1 X 7 for assistance with undressing. The provider noted that the appellant is dependent for all aspects of dressing/undressing due to increased spasticity and rigidity. He is dependent for gathering, don/doff day clothes: undershirt, shirt, boxer briefs, pants, socks and shoes. Lower body clothes are don/doff while in bed, Upper body clothes are don/doff while in chair. Time allotted is for am: doff bedclothes/don day clothes and for pm: doff day clothes and don bedclothes. Consumer changes into heated knee high socks at times throughout the day due to lower extremity becoming cold despite time of year and weather conditions (Testimony; Exhibit 4).
10. MassHealth approved the request for 15 X 1 X 7 but modified the second request to 5 X 1 X 7 (Testimony; Exhibit 4).
11. The appellant's representative testified that she personally witnessed the PCA assist the appellant with undressing and it takes at least 8 minutes for each instance (Testimony; Exhibit 4).
12. The appellant's provider requested 10 X 3 X 7 for assistance with bladder care to use the urinal and 15 X 3 X 7 for assistance with bladder care to use the toilet. The provider noted that the appellant requires physical assistance with toilet hygiene; clothing management; use of urinal; and regular transfers. The appellant reports he will let the PCA know when he needs to use the bathroom. He reports he uses both the urinal and toilet depending on urgency. He is dependent to hold urinal, empty, rinse, replace and adjust clothing. The appellant is dependent to physical lift transfer from wheelchair to bed to remove clothing, transfer onto commode chair, wheel into bathroom over toilet, wheel back into bedroom, transfer back onto bed, provide hygiene, replace lower body clothing and adjust, and physical lift transfer back into wheelchair and apply safety belt and adjust trunk (Testimony; Exhibit 4).
13. MassHealth modified the requests for assistance with bladder care to 5 X 3 X 7 and 10 X 3 X 7, respectfully (Testimony; Exhibit 4).
14. The appellant's representative testified that she had no further information about the appellant's need for assistance with this task, so she agreed to the modification (Testimony; Exhibit 4).
15. The appellant's provider requested 75 X 1 X 1 for assistance with laundry (Testimony; Exhibits 1 and 4).
16. MassHealth initially modified the request for assistance with laundry to 60 X 1 X 1; however, after hearing testimony at the hearing, MassHealth restored all time as requested for this task (Testimony; Exhibits 1 and 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 grooming-shaving, grooming-other, and laundry, MassHealth restored all time requested as a result of the testimony presented by the appellant's representative. As a result, the appeal is dismissed with regard to the modifications made in those areas.

In the area of bladder care, MassHealth modified the request for assistance with bladder care from the requested 10 X 3 X 7 and 15 X 3 X 7 to 5 X 3 X 7 and 10 X 3 X 7.

Appellant's representative testified that the time approved would meet the appellant's needs. This portion of the appeal is therefore denied.

With regard to the request for assistance in the area of undressing, MassHealth modified the time from the requested 15 X 1 X 7 and 8 X 1 X 7 to 15 X 1 X 7 and 5 X 1 X 7. MassHealth argued that the time requested is longer than ordinarily required for someone with the appellant's needs. The appellant's representative testified that she has been present when the PCA assisted the appellant with this task. She knew the time was "at least 8 minutes," as verified by her timing of the task when it was time for her to leave the residence of the appellant. The MassHealth representative has not observed the appellant being assisted with undressing. I therefore credit the appellant representative's testimony as to the time required for this task. This portion of the appeal is approved and the time will be restored to that requested.

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

Order for MassHealth

Restore all time requested time in the areas of grooming-shaving, grooming-other, undressing and laundry. With regard to all other modifications, none.

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, Division of Medical Assistance, at the address on the first page of this decision.

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

[REDACTED]