

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178762
Decision Date:	1/05/2022	Hearing Date:	12/29/2021
Hearing Officer:	Paul C. Moore		

Appellant Representatives:




MassHealth Representative:

Donna Burns, R.N., clinical 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:	Denied	Issue:	Prior Authorization, Personal Care Attendant Services
Decision Date:	1/05/2022	Hearing Date:	12/29/2021
MassHealth Rep.:	Donna Burns, R.N.	Appellant Reps.:	
Hearing Location:	Board of Hearings (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 November 8, 2021, MassHealth modified the appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services from the requested 2 hours per night, every night to 0 nighttime hours (Exhibit 1).¹ The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on November 17, 2021 (130 CMR 610.015; Exhibit 2). Modification of a PA request is valid grounds for appeal to BOH (130 CMR 610.032).

Action Taken by MassHealth

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

¹ The PCM agency also requested, and MassHealth authorized, 10 hours, 45 minutes of day/evening PCA assistance per week for the appellant (Exh. 4).

Issue

Was MassHealth correct, pursuant to 130 CMR 422.410(A) and 130 CMR 450.204(A), to modify the appellant's PA request for PCA services from the requested 2 hours per night, every night, to 0 hours per night?

Summary of Evidence

The MassHealth representative, who is a Registered Nurse consultant with Optum, testified by telephone that the appellant is a ■ year-old man who lives alone in the community. His primary diagnoses are autism, insulin-dependent diabetes, and obesity. Tempus Unlimited (“Tempus”), a Personal Care Management (“PCM”) services agency, submitted a PA re-evaluation request to MassHealth on the appellant’s behalf on or about October 28, 2021, seeking 10 hours, 45 minutes of PCA assistance per week (day/evening hours), and two nighttime hours per night, every night. The MassHealth representative testified that on November 8, 2021, MassHealth sent the appellant a written notice approving the requested 10 hours, 45 minutes of day/evening assistance per week, and denying all requested nighttime PCA assistance hours. The time period for this PA request is November 20, 2021 through November 19, 2022 (Testimony, Exh. 4).

The MassHealth representative stated that Tempus requested ten minutes of PCA assistance for the appellant, once per night, for bladder care (Testimony, Exh. 4). The MassHealth representative testified that night PCA hours are defined as occurring between midnight and 6 am. She noted that in the written evaluation from Tempus, the nurse evaluator wrote as follows:

Independent on and off the toilet. Independent wiping, uses Dude wipes surrogate reports incontinence at night and PCA is coming over ‘on her own time and helping him and it is not fair’ she works way more than she is paid for. I asked what she is doing, she states she strips the sheets and helps get clean (*sic*) up after incont. She reports it can (*sic*) bladder and/or bowel. I explained MassHealth may or may not approve this because he has the functional ability to wash private areas and he can change his lower body clothing.

(Exh. 4, p. 17)

The MassHealth representative stated that based on the fact that the appellant can toilet independently, and has the functional ability to clean himself up, MassHealth did not authorize any nighttime PCA assistance time (Testimony).

The appellant appeared by telephone, but offered no testimony. The appellant’s PCA also appeared by telephone, and testified that the appellant has urinary incontinence both during the day and at night. She is the appellant’s only PCA, and has worked with the appellant for about seventeen months. She testified that she receives calls from the appellant, who lives very nearby, that he has had accidents. She goes to his home, strips the bedsheets, washes them, and assists him to clean

himself up. She testified that this typically occurs around 11 pm or midnight, several nights per week. She stated that due to the appellant's incontinence, many items of furniture owned by the appellant have been soiled and ruined, and she has personally replaced them (Testimony).

The appellant's PCA added that the appellant has sleep apnea, and MassHealth recently purchased a bilevel positive airway pressure (BiPAP) machine for him to use. The appellant has not received it yet, but he will need assistance at night to set it up and use it. She asserted that in view of this, the appellant definitely needs nighttime hours of PCA assistance (Testimony).

The MassHealth representative stated that the PCA program does not cover anticipatory or intermittent personal care needs of members. She suggested that the appellant may wish to have the PCM agency submit a request for an adjustment to the appellant's PCA hours once the appellant receives the BiPAP machine, and MassHealth will then make a new decision on the request for an adjustment (Testimony).

In the PA request from Tempus, no daytime/evening PCA assistance for the appellant with toileting or mobility was requested. Only daytime/evening PCA assistance with bathing, grooming, dressing and undressing was requested by Tempus, as well as some assistance with instrumental activities of daily living (Exh. 4).²

Upon questioning by the hearing officer, the appellant stated that he occasionally has urinary incontinence during the day, but these episodes more often happen after he goes to bed. He stated that about half of these accidents occur before midnight, and about half occur after midnight. He does call his PCA at least twice a week for help with these episodes (Testimony).

Findings of Fact

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

1. The appellant is a ■ year-old MassHealth member who lives alone in the community (Testimony).
2. The appellant's medical diagnoses include insulin-dependent diabetes, autism and obesity (Testimony, Exh. 4).
3. Tempus, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf on or about October 28, 2021, seeking 10 hours, 45 minutes of PCA assistance per week (day/evening hours), and two nighttime hours per night, every night (*Id.*).
4. By notice dated November 8, 2021, MassHealth notified the appellant that it approved the requested 10 hours, 45 minutes of day/evening PCA assistance per week, but denied all requested nighttime PCA assistance hours (Exh. 1).

² Instrumental activities of daily living include shopping, housekeeping and laundry (Exh. 4).

5. The PA period for this request is November 20, 2021 through November 19, 2022 (*Id.*).
6. The appellant filed a timely appeal of the November 8, 2021 MassHealth notice with the BOH on November 17, 2021 (Exh. 2).
7. Tempus requested ten minutes of PCA assistance for the appellant, once per night, for bladder care (Testimony, Exh. 4).
8. In the Tempus evaluation submitted with the PA request, the Tempus nurse evaluator wrote as follows about the appellant: “Independent on and off the toilet. Independent wiping, uses Dude wipes surrogate reports incontinence at night and PCA is coming over ‘on her own time and helping him and it is not fair’ she works way more than she is paid for. I asked what she is doing, she states she strips the sheets and helps get clean (*sic*) up after incont. She reports it can (*sic*) bladder and/or bowel. I explained MassHealth may or may not approve this because he has the functional ability to wash private areas and he can change his lower body clothing” (Exh. 4, p. 17).
9. Based on the fact that the appellant can toilet independently, and has the functional ability to clean himself up, MassHealth did not authorize any nighttime PCA assistance time (Testimony).
10. In the PA request from Tempus, no daytime/evening PCA assistance for the appellant with toileting or mobility was requested (Exh. 4).
11. The appellant occasionally has urinary incontinence during the day, but these episodes more often happen after he goes to bed (Testimony).
12. About half of these incontinence episodes occur before midnight, and about half occur after midnight (Testimony).
13. The appellant’s incontinence episodes happen at least twice a week, and he calls his PCA to assist him when this happens (Testimony).
14. On those occasions when the appellant calls his PCA at night, she goes to his home, strips the bedsheets, washes them, and assists him to clean himself up (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.

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.

MassHealth regulation 130 CMR 422.402 defines "night hours" as 12:00 A.M. through 6:00 A.M.

Here, the sole issue in dispute is the medical necessity of the requested nighttime PCA assistance hours requested by the appellant. Ten minutes every night were requested for the PCA to assist the appellant with episodes of bed-time incontinence. MassHealth denied this request, as there is evidence that the appellant can toilet himself during the day, and can bathe certain areas of his body independently.

Of note, no PCA assistance was requested with the appellant's toileting or mobility activities during the day and evening.

The appellant testified credibly that his incontinence occasionally happens during the day, but is much more common at bed-time. However, the appellant's testimony was that these bed-time incontinence episodes happen "at least" two evenings per week, that about half the time they occur before midnight, and that the rest occur after midnight.

The appellant has not met his burden of showing that he needs assistance with incontinence care every night. "At least two nights a week" is not every night. PCA assistance *every night* was requested by the PCM agency on the appellant's behalf.

Also, the appellant has also not shown that his incontinence episodes *always* occur at night, which is defined in regulations, above, as between midnight and 6 am.

The appellant has the burden of proof "to demonstrate the invalidity of the administrative determination." *See, Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." *Craven v. State Ethics Comm'n*, 390 Mass. 191, 200 (1983).

Based on the above analysis, there was no error in MassHealth's decision to deny the appellant's request for 10 minutes of PCA assistance time every night.

For these reasons, 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Optum appeals representative

