

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part/dismissed in part	Appeal Number:	2179185
Decision Date:	2/17/2022	Hearing Date:	01/14/2022
Hearing Officer:	Christine Therrien		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Donna Burns, RN



*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 in part/dismissed in part	Issue:	PCA
Decision Date:	2/17/2022	Hearing Date:	01/14/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Pro se
Hearing Location:	All parties appeared by phone		

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 11/4/2021, MassHealth modified the appellant's Prior Approval (PA) for MassHealth Personal Care Attendant (PCA) benefits because MassHealth determined the services were not medically necessary (130 CMR 410.303, 130 CMR 422.410, 130 CMR 450.204 and Exhibit 1). The appellant filed this appeal in a timely manner on 12/3/2021 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, 422.412, and 450.204, in modifying appellant's prior authorization request for PCA services.

Summary of Evidence

The Optum/MassHealth representative testified a request for 79 hours and 30 minutes of day/evening hours per week and 6 nighttime hours per day of PCA services was received on behalf of the appellant dated 10/25/2021. The Optum/MassHealth representative testified that the PA request was modified

on 11/4/2021 to 78 hours and 30 minutes of day/evening hours per week and 2 nighttime hours per day. The appellant was 61 years old at the time of the PA with a primary diagnosis of Spinal Cord Injury at C3-C4 and is unable to move his extremities. At hearing the Optum/MassHealth representative and the appellant agreed upon modifications to “grooming – other” and MassHealth agreed to restore time for the application of medicated cream. The Optum/MassHealth representative testified that the appellant requested 6 nighttime hours per day. MassHealth modified this request to 2 nighttime hours per day. The Optum/MassHealth representative testified that MassHealth will only pay for a PCA to perform hands-on activities. The PA indicates that between the hours of 12am – 6am the appellant requires 6 minutes of assistance with eating, 10 minutes of assistance with bladder care, and 15 minutes of assistance with repositioning for a total of 31 nighttime minutes. The Optum/MassHealth representative testified that MassHealth rounds up to 2 hours when any nighttime hours are required.

The appellant did not dispute the amount of time he required hands-on assistance at night. The appellant testified that per the federal Fair Labor Standards Act MassHealth is required to pay for 6 hours of nighttime hours (Exhibit 2, p. 5).

Findings of Fact

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

1. On 10/25/2021, a PA was submitted on behalf of the appellant for 79 hours and 30 minutes of day/evening hours per week and 6 nighttime hours per day of PCA services.
2. The PA request was modified on 11/4/2021 to 78 hours and 30 minutes of day/evening hours per week and 2 nighttime hours per day.
3. The appellant has a primary diagnosis of Spinal Cord Injury at C3-C4 and is unable to move his extremities.
4. At hearing the appellant agreed upon modifications to “grooming – other” and MassHealth agreed to restore time for the application of medicated cream.
5. The appellant requested 6 nighttime hours per day. MassHealth modified this request to 2 nighttime hours per day.
6. MassHealth will only pay for a PCA to perform hands on activities.
7. The PA indicates that between the hours of 12am – 6am the appellant requires 6 minutes of assistance with eating, 10 minutes of assistance with bladder care, and 15 minutes of assistance with repositioning for a total of 31 nighttime minutes.
8. MassHealth rounds up to 2 hours when any nighttime hours are required.
9. The appellant did not dispute the amount of time he required hands-on assistance at night.

Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all 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 or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLs) (130 CMR 422.410(A)).

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

- (A) Activities of Daily Living. 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 or 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.

The requested services must also be medically necessary for prior authorization to be approved. 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) A service is “medically necessary” if:

- (1) it is reasonably calculated to prevent, diagnose, prevent 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. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the 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.

See 130 CMR 450.204

MassHealth approved the appellant's time requested for assistance with all activities. MassHealth reinstated time for the application of medicated lotion and compromised on time for “grooming – other” therefore these issues are DISMISSED. MassHealth modified the appellant’s request for 6 hours of nighttime hours because the hands-on time the appellant requires is 31 minutes.

While the appellant argued that the federal Fair Labor Standards Act requires that MassHealth pay the PCA for 6 hours between 12am – 6am, 130 CMR 610.082(c)(2) states that “[n]otwithstanding 130 CMR 610.082(C)(1), the hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency.”¹ For this reason the appeal on the modification of nighttime hours is DENIED.

Order for MassHealth

None.

¹ 130 CMR 610.082(C)(1) The law includes the state and federal constitutions, statutes, and duly promulgated regulations, as well as decisions of the state and federal courts.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

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