

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part

Appeal Number: 2179285

Decision Date: 01/24/2022

Hearing Date: 01/12/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:



Appearances for MassHealth:

Donna Burns, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in part; Denied in part	Issue:	Prior Authorization (PCA Services)
Decision Date:	01/24/2022	Hearing Date:	01/12/2022
MassHealth Rep:	Donna Burns, RN	Appellant Rep:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

Authority

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

Jurisdiction

Through notice dated November 10, 2021, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410; Exhibit 1). The appellant filed a timely appeal on December 8, 2021 (130 CMR 610.015(B)). Denial of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a male in his late 60s whose provider, Northeast ARC, Inc., submitted a request for PCA services on his behalf. The record reflects that the appellant has a primary diagnosis of status post stroke with left-sided weakness and secondary diagnoses of diabetes and hypertension. On November 3, 2021, MassHealth received an initial prior authorization request for PCA services. The appellant seeks PCA services in the amount of 25.50 day/evening hours per week and 14-night hours per week. On November 10, 2021, MassHealth modified the request and authorized 19.75 day/evening hours per week and 14-night hours per week.

The record includes an occupational therapy evaluation (Exhibit 3, pp. 9-11). The occupational therapist reports that the appellant has a chronic disabling condition that impacts his standing tolerance and balance, and creates difficulties with bending, grasping, coordination, and reaching. The appellant is noted to need minimal assistance with mobility, and to be dependent for all of his instrumental activities of daily living. The occupational therapist recommends a quad cane, a shower seat, grab bars, and a urinal.

MassHealth made six modifications to the prior authorization request (Exhibit 1). At hearing, the parties were able to resolve many of the disputed issues, including time for PCA assistance with toileting at night, grooming, transportation to medical appointments, and shopping. The parties were unable to resolve disputes regarding the time for PCA assistance with mobility and with housekeeping.

The appellant requested time for assistance with mobility, as follows: 5 minutes, 6 times per day, 7 days per week (to assist in the home), and 7 minutes, 2 times per day, 7 days per week (to assist on the stairs to go outside) (Exhibit 3, p. 15). The nurse evaluator writes that once the appellant is upright, he can navigate from room to room using a cane for support. The PCA lightly supports the appellant due to a recent fall, impaired balance, impaired cognition, and decreased fine motor coordination (Exhibit 3, p. 16). MassHealth modified the request to 1 minute, 6 times per day, 7 days per week (for assistance in the home) and denied the request for assistance on the stairs. The MassHealth nurse consultant stated that the record reflects that the appellant needs minimal assistance and, once standing, can move independently from room to room. Further, the appellant lives in a second floor one-level apartment, and only uses the stairs to go outside. Because there is no medical need to access the outdoors regularly or on a daily basis, MassHealth denied the request for help on the stairs. The MassHealth nurse noted that separate time was approved for assistance with transfers.

The appellant's ex-spouse appeared on the appellant's behalf. She testified by phone with the assistance of a Spanish interpreter and stated that the appellant leaves the apartment regularly. He has medical appointments and goes out for walks in the nicer weather to keep active. The appellant has teenage children and likes to participate in their lives. MassHealth responded and stated that there is no medical necessity involved in the appellant's participation in family gatherings. Further,

exercise programs are not covered as part of the PCA program.

The appellant requested 60 minutes per week for PCA time for assistance with housekeeping (Exhibit 3, p. 30). The nurse evaluator writes that the PCA is to lightly clean the consumer's personal space, clean the shower after daily use, and to change linens. MassHealth modified the request and approved 45 minutes per week. The MassHealth nurse states that the PCA is only responsible for the appellant's personal space, not the shared space in the home. MassHealth takes the position that 45 minutes per week should be sufficient to adequately clean the appellant's space. There are no documented extraordinary housekeeping needs such as extra linen changing due to incontinence.

The appellant's ex-spouse stated that she works 50 hours per week and takes care of her two children. She is very busy and does not have time to do all the cleaning. The bathroom must be cleaned daily; the appellant's "aim" is not great. A few minutes per day is not enough time for the PCA to get everything done.

Findings of Fact

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

1. The appellant is a male in his late 60s with a primary diagnosis of status post stroke with left-sided weakness and secondary diagnoses of diabetes and hypertension.
2. The appellant lives in a second floor one-level apartment with his ex-spouse and two children.
3. A recent occupational therapy evaluation includes the following findings:
 - the appellant has a chronic disabling condition that impacts his standing tolerance and balance, and creates difficulties with bending, grasping, coordination, and reaching;
 - the appellant needs minimal assistance with mobility;
 - the appellant is dependent for all of his instrumental activities of daily living;
 - recommendations were made for a quad cane, a shower seat, grab bars, and a urinal.
4. On November 3, 2021, the appellant submitted an initial request for PCA services in the amount of 25.50 day/evening hours per week and 14-night hours per week.
5. On November 10, 2021, MassHealth modified the request and authorized 19.75 day/evening hours per week and 14-night hours per week.
6. At hearing, the parties were able to resolve many of the disputed issues, including time for PCA assistance with toileting at night, grooming, transportation to medical appointments, and shopping.

7. The parties were unable to resolve disputes regarding the time for PCA assistance with mobility and with housekeeping.
8. The appellant requested time for assistance with mobility, as follows: 5 minutes, 6 times per day, 7 days per week (to assist in the home), and 7 minutes, 2 times per day, 7 days per week (to assist with the stairs used to enter and exit the apartment).
9. Once the appellant is upright, he can navigate from room to room using a cane for support.
10. The appellant requested 60 minutes per week for PCA time for assistance with housekeeping; MassHealth modified the request to 45 minutes per week.
11. The appellant does not generate any extraordinary housekeeping tasks, such as extra linen changes due to incontinence.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and 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 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 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.

(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 MassHealth as being instrumental to the health care of the member.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

The appellant disputes MassHealth’s modification of the time requested for PCA assistance with mobility and housekeeping.

The appellant has demonstrated that MassHealth’s modification/denial of PCA time for assistance with mobility is insufficient to meet his needs. For the appellant’s mobility needs in the home, MassHealth modified only the time required per event, from 5 minutes to 1 minute. MassHealth persuasively referenced the nurse’s comment that once upright, the appellant can navigate from room to room using a cane. As noted above, MassHealth has authorized time for assistance with transfers. Further, the occupational therapist concluded that the appellant needs only minimal assistance in this area. Notably, the appellant’s ex-spouse did not specifically dispute this particular modification; she did not discuss how often the PCA physically assists when the appellant travels from room to room,

nor did she discuss how much time it takes. Thus, the appellant has not demonstrated that MassHealth's modification falls short of meeting his mobility needs in the home.

For the appellant's mobility needs on stairs, MassHealth denied the request in full, arguing that there is no daily medical need for the appellant to leave his apartment. The ex-spouse disagrees and argues that the appellant needs to leave the apartment for appointments, exercise, and to participate in family life. The appellant's position seems reasonable; he is the parent of minor children, and his parenting responsibilities would extend to environments outside the home. Further, he has medical appointments regularly scheduled with various providers. As requested, (7 minutes, 2 times per day), the appellant is only seeking assistance to leave the home once per day. This request does not seem excessive. As MassHealth did not dispute the time requested per event (7 minutes), this time is approved.

The appellant has not demonstrated that MassHealth's authorization of 45 minutes per week for PCA assistance with housekeeping is insufficient to meet his needs. As noted by MassHealth, because the appellant lives with others, the PCA's responsibilities are limited to his personal space. The ex-spouse's testimony focused mostly on her busy schedule. While she was certainly credible, the ex-spouse's schedule is not particularly relevant here. The ex-spouse also mentioned that the toilet area needs to be cleaned daily. There is no evidence that wiping down the toilet area takes more than a few minutes. The appellant did not provide sufficient support for his request for 60 minutes per week for PCA assistance with housekeeping.

The appeal is approved in part and denied in part.

Order for MassHealth

Rescind notice on appeal, implement agreements made at hearing, and approve time requested for mobility assistance on stairs.

Implementation of this Decision

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.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum

