

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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

Appeal Number: 2179505

Decision Date: 2/17/2022

Hearing Date: 02/01/2022

Hearing Officer: Alexandra Shube

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:


Via telephone:

Mary-Jo Elliott, 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:	Approved in part; Denied in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	2/17/2022	Hearing Date:	02/01/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	No

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 December 1, 2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on December 16, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant was represented at hearing by his daughter-in-law who appeared via telephone.

The MassHealth representative testified that the documentation submitted shows that the appellant is an adult male over the age of 65 with a primary diagnosis of frailty. Relevant medical history shows that the appellant also has a history of right-side cerebrovascular accident (CVA or stroke) with left-side hemiparesis, type 2 diabetes, congestive heart failure, coronary artery disease, hypertension, gastroesophageal reflux disease, and right knee osteoarthritis. He lives with his son, daughter-in-law, and four grandchildren in a two-story single family home with his bedroom and bathroom on the first floor. He needs to be pushed in his wheelchair and needs physical assistance for all transfers. He has cognitive changes, pain, weakness, impaired sensation, cannot stand without support, one-hand use, and urine incontinence.

On November 9, 2021, the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services requesting 82 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night for the dates of service of December 15, 2021 through December 14, 2022. On December 1, 2021, MassHealth modified the request to 62 hours and 0 minutes of day/evening hours and 2 nighttime hours per night. MassHealth made modifications related to PCA assistance with the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): mobility, transfers, repositioning, passive range of motion, bathing, bladder care, bowel care, medication pre-fill, and housekeeping. At hearing, parties were able to resolve the disputes related to mobility¹ and repositioning.²

Transfers

The appellant requested 7 minutes, 5 times per day, 7 days per week for transfers. MassHealth modified the request to 5 minutes, 5 times per day, 7 days per week.

The MassHealth representative explained that documentation shows the PCA uses a pivot transfer with the appellant. 7 minutes is longer than ordinarily required for a pivot transfer and would be a long time for someone to be suspended between going from the bed to wheelchair or wheelchair to bed. The transfer time includes getting the appellant up into position, pivoting, and sitting him down. It does not include time to reposition him, which is a separate ADL. The documentation shows no mechanical device is used and 7 minutes would be a long time for a transfer without the use of any mechanical device or slide.

The appellant's representative responded that it can take a long time to transfer for him because it first involves setting things up and prepping the appellant before they begin to move him. It

¹ Mobility was modified to 3 minutes, 5 times per day, 7 days per week.

² Repositioning was fully restored as requested to 7 minutes, 2 times per day, 7 days per week.

involves a lot of cueing, coaching, and prompting of the appellant. They also use physical body prompts to get him to respond and support him during the transfer. He is a high fall risk, and his ankle goes out and he has a bad knee.

MassHealth responded that coaching, cueing, prompting, and wait time are not covered under the PCA program.

Passive Range of Motion

The appellant requested 10 minutes, 2 times per day, 7 days per week each for the upper left extremity, upper right extremity, lower left extremity, and lower right extremity. MassHealth approved the time requested for the upper and lower left extremities but denied the time for the upper and lower right extremities.

The MassHealth representative explained that passive range of motion is generally for someone who cannot independently perform active range of motions. Due to the appellant's left-side hemiparesis, he was approved for passive range of motion on the left side; however, since he can independently move his right side, he was denied passive range of motion on the right side.

The appellant testified that they were never advised to only work on the left side. They need to keep things even on both sides. Even though he is only paralyzed on his left side, the right side is very much affected by the paralysis. He has the ability to do some of it on his own, but with his short-term memory and cognitive deficits, he cannot remember what or how many exercises he has or has not completed. The PCA has to move his arm with him, count the repetitions for him, and prompt him. The movement is very important for the appellant's well-being.

MassHealth responded that 10 minutes, 2 times per day is a lot of time for passive range of motion, which is not intended to add strength (because the PCA is doing the motions), but to prevent contractures. She offered to approve 5 minutes, 2 times per day, 7 days a week for the upper and lower right extremities.

Bathing and Washing Hair

The appellant requested 60 minutes, 1 time per day, 7 days per week for shower; 10 minutes, 1 time per day, 7 days per week for a PM wash-up; and 3 minutes, 1 time per day, 7 days per week for washing hair. MassHealth approved the time requested for the PM wash-up and modified the shower time to 45 minutes, 1 time per day, 7 days per week, including the hair washing.

The MassHealth representative explained that the time approved for showering included pivot transfers in and out of the shower and time for washing, shampooing, and drying.

The appellant testified that showering is a very involved process. He does not have long hair. He is a high fall risk and they have to be especially careful when he (and the bathroom and PCA) are wet. The process begins by first warming up the bathroom for the appellant. He requires a lot of water temperature adjustments, which he cannot do himself. When washing the appellant's body, he likes

a very vigorous scrub. Due to his memory loss, they often have to wash areas that have already been washed more than once because he forgets that it has already been washed and requests it to be washed again. He has to go from his wheelchair to a bathroom chair where they get him undressed, then to the shower chair, then transferred back out after the shower. She stated that the process easily takes 60 minutes.

Bladder and Bowel Care

The appellant requested 25 minutes, 8 times per day, 7 days per week for bladder care and 25 minutes, 1 time per day, 7 days per week for bowel care. MassHealth modified the time for bladder care to 15 minutes, 8 times per day, 7 days per week and bowel care to 20 minutes, 1 time per day, 7 days per week.

The MassHealth representative explained that the time was requested was longer than ordinarily required. Additionally, she noted that bladder care typically takes longer than bowel care. The comments in the prior authorization request stated that the appellant “is stand and pivot only, must be propelled in wheelchair, requires physical assistance to and from BR, on to and off of toilet, is unable to bend, reach, stretch, twist, or grasp to retrieve supplies, or tend to hygiene, and requires physical assistance with clothing management...” The appellant is incontinent of bowel and bladder.

The appellant clarified that he does not wear any absorbency products during the day. He has to sit for everything. He sometimes misses the toilet when he pees, which requires changing his socks and sometimes more. They have to wipe down his skin when he misses the toilet. They have to make sure his left arm is in the right spot and reposition it if not. He also likes his legs in a particular position. They do not rush him.

The MassHealth representative clarified that it is time to transfer him on and off the toilet and help with hygiene and clothing management. It does not include wait time while he is on the toilet.

Medication Prefill

The appellant requested 20 minutes, 1 time per week for assistance with prefilling the medication box. MassHealth modified the request to 10 minutes, 1 time per week because it was longer than ordinarily required.

The MassHealth representative stated that there was no medication list attached and she had no way of knowing how many medications the appellant needed prefilled.

The appellant stated that he has thirteen medications. Some have to be cut in half and there is a chart the PCA needs to follow. The appellant’s daughter-in-law could not say how long it takes her to prefill the medications, but there are often interruptions while she is doing it to go care for the appellant.

The MassHealth representative responded that thirteen medications is not a lot and it is a repetitive

task that takes place every week. For these reasons, 10 minutes should be sufficient. Without the medication list, there is nothing to show why it would take longer than that.

Housekeeping

The appellant requested 60 minutes, 1 time per week for assistance with housekeeping. MassHealth modified the request to 45 minutes, 1 time per week.

The MassHealth representative stated that there were no comments on any specific housekeeping needs. The appellant lives with other people and they are expected to help with common areas. Meal preparation, cleaning up after meal preparation, and laundry are considered separately.

The appellant's daughter-in-law testified that the appellant has his own room and bathroom. Housekeeping involves cleaning and wiping down his shower, dusting, cleaning his toilet, vacuuming his room, making sure his space is clean, and emptying his garbage. She could not specify how long housekeeping took on a weekly basis for the appellant.

Findings of Fact

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

1. The appellant is a MassHealth member over the age of 65 with a primary diagnosis of frailty (Testimony and Exhibit 4).
2. Relevant medical history shows that the appellant has a history of right-side cerebrovascular accident (CVA or stroke) with left-side hemiparesis, type 2 diabetes, congestive heart failure, coronary artery disease, hypertension, gastroesophageal reflux disease, right knee osteoarthritis, and cognitive changes (Testimony and Exhibit 4).
3. On November 9, 2021, MassHealth received a prior authorization request for PCA services on requesting 82 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night, 7 nights per week for dates of service of December 15, 2021 through December 14, 2022 (Testimony and Exhibit 4).
4. MassHealth modified the request to 62 hours and 0 minutes of day/evening hours and 2 nighttime hours per night (Testimony and Exhibit 4).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with the following ADLs: mobility and repositioning (Testimony).
6. The appellant seeks time for PCA assistance with transfers as follows: 7 minutes, 5 times per day, 7 days per week (Testimony and Exhibit 4).
7. MassHealth modified the request to 5 minutes, 5 times per day, 7 days per week (Testimony

and Exhibit 4).

8. The appellant requires a pivot transfer and does not use a slide or mechanical lift (Testimony and Exhibit 4).
9. The appellant seeks time for PCA assistance with passive range of motion as follows: 10 minutes, 2 times per day, 7 days per week each for the upper left extremity, upper right extremity, lower left extremity, and lower right extremity (Testimony and Exhibit 4).
10. MassHealth approved the time requested for the upper and lower left extremities, but denied the time for the upper and lower right extremities (Testimony and Exhibit 4).
11. The appellant can move his right side independently, but not his left side. (Testimony and Exhibit 4).
12. At hearing, MassHealth offered to increase the amount of time for assistance with passive range of motion for the upper and lower right extremities to 5 minutes, 2 times per day, 7 days per week (Testimony).
13. The appellant seeks time for PCA assistance with bathing activities as follows: 60 minutes, 1 time per day, 7 days per week for shower; 10 minutes, 1 time per day, 7 days per week for a PM wash-up; and 3 minutes, 1 time per day, 7 days per week for washing hair (Testimony and Exhibit 4).
14. MassHealth approved the time requested for the PM wash-up and modified the shower time to 45 minutes, 1 time per day, 7 days per week, including the hair washing (Testimony and Exhibit 4).
15. The appellant has short hair, but the bathing process is very involved and includes multiple transfers. He likes a vigorous body scrub that often needs to be repeated due to his memory loss. (Testimony).
16. The appellant seeks time for PCA assistance with bladder and bowel care as follows: 25 minutes, 8 times per day, 7 days per week for bladder care and 25 minutes, 1 time per day, 7 days per week for bowel care (Testimony and Exhibit 4).
17. MassHealth modified the time for bladder care to 15 minutes, 8 times per day, 7 days per week and bowel care to 20 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
18. The appellant seeks time for PCA assistance with medication prefill as follows: 20 minutes, 1 time per week (Testimony and Exhibit 4).
19. MassHealth modified the request to 10 minutes, 1 time per week (Testimony and Exhibit 4).
20. The PCM agency did not include a medication list with the prior authorization request, but the

appellant's representative stated he has thirteen medications that need to be prefilled (Exhibit 4 and Testimony).

21. The appellant seeks time for PCA assistance with housekeeping as follows: 60 minutes, 1 time per week (Testimony and Exhibit 4).
22. MassHealth modified the request to 45 minutes, 1 time per week (Testimony and Exhibit 4).
23. The appellant's representative did not know how long housekeeping took on a weekly basis, but it involves cleaning and wiping down the appellant's shower, dusting, cleaning his toilet, vacuuming his room, making sure his space is clean, and emptying his garbage (Testimony).

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 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 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).

The requested services must also be medically necessary for the 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to mobility and repositioning because at hearing the parties were able to resolve the disputes related to PCA assistance with those ADLs.

Transfers

As to the appellant's request for transfers, the appeal is denied. MassHealth authorized 5 minutes, 5 times per day, 7 days per week for transfers. The appellant has not demonstrated that additional PCA assistance with transfers should be authorized. Documentation shows that transfers are a pivot transfer done without the use of a mechanical lift or slide. The registered nurse representing MassHealth explained that 7 minutes is longer than ordinarily required for a pivot transfer. It would be a long time to suspend someone between the bed and wheelchair or wheelchair and bed without the use of a slide or mechanical lift. Additionally, the appellant's representative testified that transfers involve a lot of cueing, coaching, and prompting. Those are not covered services in the PCA program and cannot be included in the calculation for PCA assistance (130 CMR 422.412(C)). For this reason, the appellant has not demonstrated that any further PCA assistance is medically necessary with the ADL of transfers and the appeal is denied.

Passive Range of Motion

As to the appellant's request for passive range of motion, the appeal is approved in part and denied in part. At hearing, MassHealth offered to increase the time approved for the right upper and lower extremities to 5 minutes, 2 times per day, 7 days per week. Given that the appellant can independently move his right side, the appellant has not demonstrated any further PCA assistance with right-sided passive range of motion is medically necessary. For this reason, the appellant is approved for 5 minutes, 2 times per day, 7 days per week for passive range of motion for both the upper and lower right extremities.

Bathing and Hair Washing

As to the appellant's requests for bathing and washing hair, the appeal is approved in part and denied in part. The appellant's testimony and evidence support the need for 60 minutes, 1 time per day, 7 days per week for showering, including washing hair. Given that the appellant has short hair, he did not demonstrate the need for an additional 3 minutes, 1 time per day, 7 days per week for hair washing. The showering process involves multiple transfers. The appellant is a fall risk and they have to move carefully, especially when he and the PCA are wet. The appellant also likes a very vigorous body scrub. Additionally, due to his cognitive impairments, the washing process is often repeated. For these reasons, the appellant is approved for 60 minutes, 1 time per day, 7 days per week for bathing, but denied the additional 3 minutes, 1 time per day, 7 days per week for washing hair.

Bladder and Bowel Care

As to the appellant's requests for bladder and bowel care, the appeals are denied. MassHealth authorized 15 minutes, 8 times per day, 7 days per week for bladder care and 20 minutes, 1 time per day, 7 days per week for bowel care. The appellant has not demonstrated that PCA assistance with

bladder and bowel take longer than the time approved. For this reason, the appellant has not shown that any further PCA assistance is medically necessary with the ADLs of bladder and bowel care and the appeals are denied.

Medication Prefill

As to the appellant's request for medication prefill, the appeal is denied. MassHealth authorized 10 minutes, 1 time per week. The PCM agency did not submit a medication list, but based on testimony, the appellant has thirteen medications. MassHealth explained that thirteen is not a lot of medications to prefill and it is a repetitive task done every week. As such, 10 minutes should be sufficient. The appellant could not say how long it takes her to prefill medications and while she might get interrupted doing the task, that interruption or waiting time is not covered under the PCA program. For these reasons, the appellant has not demonstrated that additional PCA assistance is medically necessary with the ADL of medication prefill and the appeal is denied.

Housekeeping

As to the appellant's request for housekeeping, the appeal is denied. MassHealth authorized 45 minutes, 1 time per week. The appellant's daughter-in-law could not say how long housekeeping for the appellant takes, but it involves cleaning and wiping down his shower, dusting, cleaning his toilet, vacuuming his room, making sure his space is clean, and emptying his garbage. The appellant lives with his adult son and daughter-in-law and they are expected to help with common areas. The appellant did not provide sufficient information to demonstrate why cleaning the appellant's personal areas takes longer than the 45 minutes approved. For these reasons, the appellant has not shown that any further PCA assistance is medically necessary with the IADL of housekeeping and the appeal is denied.

Order for MassHealth

Approve for 5 minutes, 2 times per day, 7 days per week for passive range of motion for both the upper and lower right extremities. Approve 60 minutes, 1 time per day, 7 days per week for showering. Implement the agreements made at hearing for mobility (3 minutes, 5 times per day, 7 days per week) and repositioning (fully restored as requested to 7 minutes, 2 times per day, 7 days per week).

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.

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, at the address on the first page of this decision.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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