

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2179608

Decision Date: 2/16/2022

Hearing Date: 01/18/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliott, 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:	Dismissed in part; Denied in part	Issue:	Personal Care Attendant Services
Decision Date:	2/16/2022	Hearing Date:	01/18/2022
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	██████████
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 12/02/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 17:30 day/evening hours per week plus 2 daily night time attendant hours to 9:00 day/evening hours per week plus 2 daily night time attendant hours for the dates of service from 12/02/2021 to 12/01/2022 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 12/20/2021 (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.

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 on 11/23/2021 a prior authorization request (PA) for PCA services was received on appellant's behalf from her PCA provider, Tempus, Inc. ("provider"), and is an initial evaluation request for the dates of service of 12/02/2021 to 12/01/2022. In the PA request for PCA services, the provider requested 17:30 day/evening hours per week plus 2 daily nighttime attendant hours. The appellant is over [REDACTED] years of age and her primary diagnoses affecting her ability to function independently are cardio-vascular accident (CVA or stroke) with right side hemiplegia, chronic heart failure, atrial fibrillation, fracture of her left hip on 6/29/2020, cellulitis lower left extremity, glaucoma, hypertension, macular degeneration and blindness in the right eye (Exhibit 4).

The Optum representative testified that on 12/02/2021 MassHealth modified the PCA request to 9:00 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 mobility, transfers, repositioning, passive range of motion exercises, assistance with medications, grooming-oral care, grooming-hair care, undressing, bladder care, and foot soak. MassHealth modified the request for assistance in the instrumental activity of daily living (IADL) of meal preparation and cleanup.

The appellant has home health aide services in the home from 8:00 a.m. to 11:00 a.m., 2:00 p.m. – 5:00 p.m., and 7:00 p.m. – 10:00 p.m. daily. The PCA is scheduled to be in the home from 12:00 p.m. – 2:00 p.m. daily, 5:00 p.m. – 6:00 p.m. four days per week and 5:00 p.m. – 7:00 p.m. two days per week.

Mobility, Repositioning, and Transfers

The appellant's provider requested on the appellant's behalf 1 minute, 4 times per day, 7

days per week (1 X 4 X 7²) for assistance with mobility, 3 X 4 X 7 for assistance with repositioning and 4 X 4 X 7 for assistance with transfers. MassHealth initially modified the request for assistance with mobility to 1 X 2 X 7, repositioning to 3 X 2 X 7 and transfers to 4 X 2 X 7; however, after hearing testimony from the appellant representative at the fair hearing, MassHealth restored all time as requested for these tasks.

Passive Range of Motion (PROM) Exercises

The appellant's PCA provider requested no time for assistance with PROM exercises for her upper left extremity (ULE), 8 X 1 X 7 for her lower left extremity (LLE), 6 X 1 X 7 for her upper right extremity (URE) and 8 X 1 X 7 for her lower right extremity (LRE). MassHealth denied the request for PCA time for PROM for the LLE. The MassHealth representative testified that the documentation included in the PA request includes information that the appellant has suffered a recent fracture of left leg. As a result, PROM would not be indicated in this situation. MassHealth modified the request for assistance with URE and LRE to 5 X 1 X 7, each. The MassHealth representative testified that the time requested exceeds the ordinary time necessary for someone with the appellant's conditions.

The appellant's daughter testified that the PCA assists the appellant with PROM in the evening. She agreed with the time, as modified by MassHealth.

Assistance with Medications

The appellant's provider requested 10 X 1 X 7 for assistance with medications. The provider noted that the appellant is dependent with all meds, they are crushed if large, and mixed in applesauce. Medications: pills, eye drops, foot ointment, patches and cream for pain.

MassHealth modified the request for assistance with medications to 3 X 1 X 7. The MassHealth representative testified that according to the documentation, the appellant takes eye drops and two medications in evening. The time requested is greater than what is ordinarily necessary for someone with the appellant's conditions.

The appellant's daughter testified that the appellant needs creams on her knees and arms for pain. She also does not swallow quickly. She needs her pills to be mixed with applesauce.

MassHealth responded that the modified time could be increased to 5 X 1 X 7.

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.

Other Healthcare Needs – Foot Soak

The appellant's PCA provider requested 10 X 1 X 7 for assistance with foot soaks. The provider noted that the PCA assists the appellant with Epsom Salt foot soaks in the afternoon/evening.

MassHealth modified the request for assistance with foot soaks to 5 X 1 X 7. The MassHealth representative testified that the PCA is responsible for preparing the foot bath and assisting the appellant into and out of the foot bath, dry her feet and to clean up. The MassHealth representative testified that the standard of care for foot baths is not a year-long request. Also, open wounds in the feet can become infected.

The appellant's daughter responded that the appellant is under the care of a wound doctor at St. Elizabeth's Hospital. That doctor is monitoring the appellant's situation.

Grooming

The appellant's provider requested 4 X 2 X 7 for assistance with oral care and 1 X 1 X 7 for assistance with hair care. MassHealth initially modified the request for grooming to 2 X 1 X 7 for oral care and no time for hair care; however, based upon the testimony of the appeal representative, MassHealth restored all time requested for assistance with grooming.

Undressing

The appellant's provider requested 12 X 1 X 7 for assistance with undressing. MassHealth initially modified the request for assistance with undressing to 10 X 1 X 7; however, after hearing testimony at the fair hearing, MassHealth restored all time requested for assistance with undressing.

Bladder Care

The appellant's provider requested 12 X 3 X 7 for assistance with bladder care. The provider noted that she needs physical assistance with toilet hygiene; clothing management; changing absorbent product; and regular transfers.

MassHealth initially modified the request for assistance with bladder care to 12 X 1 X 7; however, at the fair hearing she adjusted the modification to 12 X 2 X 7.

The appellant's daughter agreed that the 12 X 2 X 7 would meet the appellant's needs for assistance in this area.

Meal Preparation and Cleanup - Snacks

The appellant's provider requested 10 X 1 X 7 for assistance with meal preparation and cleanup for snacks. The provider noted that the PCA assists the appellant with her snack, consisting of fruit, honey, nuts, and tea.

MassHealth modified the request for assistance with snacks to 5 X 1 X 7. The MassHealth representative testified that it should not take more than 5 minutes to prepare and clean up the snack. Additionally, she warned that nuts should not be given to someone who has a swallowing problem.

The appellant's daughter responded that a snack is usually an apple or other fruit, shredded or mushed. Nuts are crushed.

Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf on 11/23/2021 from her PCA provider, Tempus, Inc. ("provider"). It is an initial evaluation request for the dates of service of 12/02/2021 to 12/01/2022 (Testimony; Exhibit 4).
2. In the PA request for PCA services, the provider requested 17:30 day/evening hours per week plus 2 daily nighttime attendant hours (Testimony; Exhibit 4).
3. The appellant is over [REDACTED] years of age and her primary diagnoses affecting her ability to function independently are cardio-vascular accident (CVA or stroke) with right side hemiplegia, chronic heart failure, atrial fibrillation, fracture of her left hip on 6/29/2020, cellulitis lower left extremity, glaucoma, hypertension, macular degeneration and blindness in the right eye (Testimony; Exhibit 4).
4. On 12/02/2021 MassHealth modified the PCA request to 9:00 day/evening hours per week plus 2 daily night time attendant hours (Testimony; Exhibits 1 and 4).
5. The appellant's provider requested on the appellant's behalf 1 minute, 4 times per day, 7 days per week (1 X 4 X 7) for assistance with mobility, 3 X 4 X 7 for assistance with repositioning and 4 X 4 X 7 for assistance with transfers. MassHealth initially modified the request for assistance with mobility to 1 X 2 X 7, repositioning to 3 X 2 X 7 and transfers to 4 X 2 X 7 (Testimony; Exhibits 1 and 4).
6. At the fair hearing, MassHealth restored all time as requested for assistance with mobility, repositioning, and transfers (Testimony; Exhibit 4).

7. The appellant's PCA provider requested no time for assistance with PROM exercises for her upper left extremity (ULE), 8 X 1 X 7 for her lower left extremity (LLE), 6 X 1 X 7 for her upper right extremity (URE) and 8 X 1 X 7 for her lower right extremity (LRE) (Testimony; Exhibit 4).
8. MassHealth denied the request for PCA time for PROM for the LLE. MassHealth modified the request for assistance with URE and LRE to 5 X 1 X 7, each. (Testimony; Exhibit 4).
9. The appellant's representative testified that the time for assistance with PROM, as modified by MassHealth would meet the appellant's needs (Testimony).
10. The appellant's provider requested 10 X 1 X 7 for assistance with medications. The provider noted that the appellant is dependent with all meds, they are crushed if large, mixed in applesauce. Medications: pills, eye drops, foot ointment, patches and cream for pain (Testimony; Exhibit 4).
11. The appellant's provider requested 5 X 1 X 1 for assistance with nail care. The provider noted that the appellant is unable to manipulate grooming tools including toothbrush and hairbrush due to decreased fine motor coordination and gross motor coordination. She is resistive to nail care, hair care, and oral care due to sensory integration disorder/tactile defensiveness, causing these tasks to take longer to complete. The appellant doesn't participate in completing any of her grooming tasks due to cognitive limitations and has vision impairment that affects her ability to perform ADLs (Testimony; Exhibit 4).
12. MassHealth modified the request for assistance with medications to 3 X 1 X 7; however, at the fair hearing, MassHealth adjusted the modified time to 5 X 1 X 7 (Testimony; Exhibits 1 and 4).
13. The appellant's PCA provider requested 10 X 1 X 7 for assistance with foot soaks. The provider noted that the PCA assists the appellant with Epsom Salt foot soaks in the afternoon/evening (Testimony; Exhibit 4).
14. MassHealth modified the request for assistance with foot soaks to 5 X 1 X 7 (Testimony; Exhibit 4).
15. The appellant's provider requested 4 X 2 X 7 for assistance with oral care and 1 X 1 X 7 for assistance with hair care (Testimony; Exhibit 4).
16. MassHealth initially modified the request for grooming to 2 X 1 X 7 for oral care and no time for hair care; however, based upon the testimony of the appeal representative, MassHealth restored all times requested for assistance with grooming (Testimony; Exhibit 4).

17. The appellant's provider requested 12 X 1 X 7 for assistance with undressing (Testimony; Exhibit 4).
18. MassHealth initially modified the request for assistance with undressing to 10 X 1 X 7; however, after hearing testimony at the fair hearing, MassHealth restored all time requested for assistance with undressing (Testimony; Exhibit 4).
19. The appellant's provider requested 12 X 3 X 7 for assistance with bladder care. The provider noted that she needs physical assistance with toilet hygiene; clothing management; changing absorbent product; and regular transfers (Testimony; Exhibit 4).
20. MassHealth initially modified the request for assistance with bladder care to 12 X 1 X 7; however, at the fair hearing she adjusted the modification to 12 X 2 X 7 (Testimony; Exhibit 4).
21. The appellant's representative testified that the time for assistance with bladder care, as modified by MassHealth at the fair hearing would meet the appellant's needs (Testimony).
22. The appellant's provider requested 10 X 1 X 7 for assistance with meal preparation and cleanup for snacks. The provider noted that the PCA assists the appellant with her snack, consisting of fruit, honey, nuts, and tea (Testimony; Exhibit 4).
23. MassHealth modified the request for assistance with snacks to 5 X 1 X 7 (Testimony; Exhibit 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.

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 mobility, transfers, repositioning, oral care, hair care and undressing, MassHealth restored all time, as requested, at the fair hearing. Thus, this portion of the appeal is dismissed.

In the areas of PROM and Bladder Care, MassHealth made modifications to the requested time for assistance. The appellant's daughter appeared on behalf of the appellant at the fair hearing. She responded that the time, as modified by MassHealth, would meet the appellant's needs in these areas. This portion of the appeal is therefore denied.

In the area of assistance with medications, the appellant's provider requested 10 X 1 X 7. The provider noted that the appellant is dependent with all meds, they are crushed if large, mixed in applesauce. Medications: pills, eye drops, foot ointment, patches and cream for pain. MassHealth initially modified the request for assistance with medications to 3 X 1 X 7; however, at the fair hearing MassHealth adjusted the modification to 5 X 1 X 7. The MassHealth representative testified that according to the documentation, the appellant takes eye drops and two medications in evening. The appellant's daughter responded that the two oral medications need to be crushed and mixed with applesauce. She did not explain how much time was necessary to perform this task. Accordingly, the appellant's representative has not met her burden of showing that the time, as modified, is not adequate. This portion of the appeal is denied.

In the area of assistance with foot soaks, the appellant's PCA provider requested 10 X 1 X 7, noting that the PCA assists the appellant with Epsom Salt foot soaks in the afternoon/evening. MassHealth modified the request for assistance with foot soaks to 5 X 1 X 7. The MassHealth representative testified that the PCA is responsible for preparing the foot bath and assisting the appellant into and out of the foot bath, dry her feet and to clean up. The appellant's daughter responded that the appellant is under the care of a

wound doctor at St. Elizabeth's Hospital. That doctor is monitoring the appellant's situation. The appellant representative's testimony does not provide any direct information about how much time the appellant needs for assistance with foot soaks. She has not met her burden of showing that MassHealth's action is incorrect or that another result is warranted in this area. Therefore, this portion of the appeal is denied.

In the area of meal preparation and cleanup for snacks, the appellant's provider requested 10 X 1 X 7, noting that the PCA assists the appellant with her snack, consisting of fruit, honey, nuts, and tea. MassHealth modified the request for assistance with snacks to 5 X 1 X 7. The MassHealth representative testified that it should not take more than 5 minutes to prepare and clean up the snack. The appellant's daughter responded that a snack is usually an apple or other fruit, shredded or mashed. Nuts are crushed. The appellant's representative provided no direct testimony or other evidence to show how much time the PCA spends to prepare and cleanup after the snack. She did not meet her burden of showing the time, as modified by MassHealth is incorrect or that another result is warranted. Therefore, this portion of the appeal is denied.

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

Order for MassHealth

Restore all time, as requested, in the areas of mobility, repositioning, transfers, oral care, hair care, and undressing. With regard to 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