

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2200026

Decision Date: 4/15/22

Hearing Date: 01/25/2022

Hearing Officer: Samantha Kurkijy

Appearances for Appellant:



Appearances for MassHealth:

Mary-Jo Elliott, 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:	Denied	Issue:	Prior Authorization (PCA Services)
Decision Date:	4/15/22	Hearing Date:	01/25/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	Appellant's Mother
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 a notice dated December 15, 2021, MassHealth modified the appellant's request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on January 3, 2022 (130 CMR 610.015(B); Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services from 26.25 day/evening hours per week to 17 day/evening hours per week.

Issue

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

Summary of Evidence

The MassHealth representative, who is a registered nurse and a clinical reviewer with MassHealth's adult PCA program, testified by telephone and explained that the appellant is a male in his 20s with diagnoses including severe toxic vs. anoxic brain injury secondary to a drug overdose, acute respiratory failure, autonomic instability, compartment syndrome, status post fasciotomy, history of skin breakdown on head, back and bilateral heels, bilateral elbow flexion contractures, spasticity, plantar flexion, and decreased dexterity (Exhibit 5, p. 8). The appellant is dependent for all activities of daily living (ADLs) and all instrumental activities of daily living (IADLs) (Exhibit 5, p. 8). The prior authorization (PA) request at issue was submitted to MassHealth on November 22, 2021, seeking a total of 26.25 day/evening PCA hours per week, along with an additional 14 hours of nighttime services per week. After its review of the case, MassHealth modified the request to allow for 17 hours of day/evening services. The full request for nighttime assistance was approved. The dates of service are from December 27, 2021 through December 26, 2022.

The MassHealth representative testified that each of the areas of modification was made not because the appellant does not need the services, but because of an apparent duplication of services in light of support services provided through the Moving Forward Plan (MFP) Waiver, a MassHealth home- and community-based services waiver. She explained that the appellant's Plan of Care through the MFP Waiver includes caregiving services through Senior Helpers that are duplicative of the services requested here (Exhibit 5, p. 36). She stated that the Senior Helpers caregivers provide assistance to the appellant between 9 a.m. and 2 p.m., and assist the appellant with medical transportation, a morning shower, dressing, breakfast, mobility, toileting, lunch, and light housekeeping.¹ The MassHealth representative stated that the modifications made to the PCA request reflect time requested for tasks that are completed when a Senior Helpers caregiver is scheduled to be in the home. MassHealth therefore modified only the frequency of the tasks and not the time requested per task. In addition, the request for assistance with housekeeping was denied because the PCA application indicated that Senior Helpers staff performs this service.

Based on the appellant's schedule of services through the waiver and the assistance provided above, MassHealth made the following modifications: In the category of assistance with mobility, the appellant requested assistance of 3 minutes, 6 times per day, 7 days per week (Exhibit 5, p. 9). MassHealth modified the frequency to 2 times per day. Similarly, in the category of assistance with transfers, the appellant requested assistance of 4 minutes, 6 times per day, 7 days per week (Exhibit 5, p. 10). MassHealth modified the frequency to 3 times per day. In the category of assistance with passive range of motion, the appellant requested assistance of 8 minutes, 2 times per day, 7 days per week for the lower left extremity, and 8 minutes, 2 times per day, 7 days per week for the lower right extremity (Exhibit 5, p. 11). MassHealth modified the frequency of both requests to 1 time per day. In the category of dressing, the appellant requested assistance of 7 minutes, 1 time per day, 7

¹ The MassHealth representative noted that this information is included on the PCA application but is not part of the documentation submitted in preparation for the appeal.

days per week (Exhibit 5, p. 14). MassHealth denied this time in full. In the category of assistance with housekeeping, the appellant requested assistance of 30 minutes per week (Exhibit 5, p. 23). MassHealth denied this request in full.²

The appellant's mother testified by telephone on the appellant's behalf. She stated that the Senior Helpers caregivers are unreliable and recently did not show up to assist the appellant on the following dates: December 22, 24, 25, and 27, 2021, as well as January 2, 4, and 7, 2022. She stated that Senior Helpers has indicated that they cannot provide any coverage for the appellant on Tuesdays, and cannot provide coverage early on Sundays, which the appellant needs. Further, there is not a consistent caregiver available on Saturdays, and it is less than ideal to have multiple caregivers who are not familiar with the appellant's needs and who need access to a key to the appellant's home. The appellant's mother stated that the Senior Helpers caregivers assist the appellant approximately four times per week, and thus the PCA time requested not a duplication of services.³ The appellant's mother testified that she travels to the appellant's home every day and assists him with tasks such as medication administration, heel stretching, and dinner preparation. She also assists when he takes walks around the block due to his poor balance. She noted that outside of the 9 a.m. to 2 p.m. time frame, she assists the appellant with various transfers at least 6 times per day.

The MassHealth representative responded and stated that the appellant needs to update his MFP Waiver Plan of Care to accurately reflect the caregiving services he actually receives. As currently documented, Senior Helpers is providing and is for a wide range of personal care services (Exhibit 5).

Findings of Fact

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

1. The appellant is a male in his 20s with diagnoses including severe toxic vs. anoxic brain injury secondary to a drug overdose, acute respiratory failure, autonomic instability, compartment syndrome, status post fasciotomy, history of skin breakdown on head, back and bilateral heels, bilateral elbow flexion contractures, spasticity, plantar flexion, and decreased dexterity.

² At hearing, MassHealth restored the time requested for bathing (30 minutes daily) and oral care (21 minutes daily). The appellant's mother therefore withdrew her challenges to these modifications. Further, although MassHealth modified the request for assistance with nighttime bladder care, the appellant's other nighttime needs resulted in an authorization of 14 hours per week of nighttime assistance. Thus, because the modification of the request for nighttime bladder care did not affect the appellant's nighttime hours, the appellant's mother withdrew her challenge to this modification.

³ The appellant's mother did not dispute MassHealth's assertion that when on duty, the Senior Helpers caregivers assist the appellant with medical transportation, a morning shower, dressing, breakfast, mobility, toileting, lunch, and light housekeeping.

2. The appellant is dependent for all ADLs and all IADLs.
3. On November 22, 2021, the appellant's PCA agency submitted a MassHealth re-evaluation application for PCA services. This application requested 26.25 hours of day/evening PCA services, as well as 14 hours of nighttime services, per week.
4. On December 15, 2021, MassHealth modified the request to allow a total of 17 hours of day/evening assistance per week. The full time requested for nighttime assistance was approved.
5. The appellant participates in MassHealth's MFP Waiver, a home- and community-based services waiver.
6. MassHealth modified the PCA request to address an apparent duplication of services with the Senior Helpers, a waiver-sponsored provider. The areas of duplication were identified by comparing the Senior Helpers schedule and list of tasks to the specific tasks for which PCA assistance was requested.
7. No PCA time was disallowed on the basis of medical necessity.
8. In the category of assistance with mobility, the appellant requested assistance of 3 minutes, 6 times per day, 7 days per week; MassHealth modified the frequency to 2 times per day.
9. In the category of assistance with transfers, the appellant requested assistance of 4 minutes, 6 times per day, 7 days per week; MassHealth modified the frequency to 3 times per day.
10. In the category of assistance with passive range of motion, the appellant requested assistance of 8 minutes, 2 times per day, 7 days per week for the lower left extremity, and 8 minutes, 2 times per day, 7 days per week for the lower right extremity; MassHealth modified the frequency of both requests to 1 time per day.
11. In the category of dressing, the appellant requested assistance of 7 minutes, 1 time per day, 7 days per week; MassHealth denied this request in full.
12. In the category of assistance with housekeeping, the appellant requested assistance of 30 minutes per week; MassHealth denied this request in full.

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.

(C) 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

In this case, there is no dispute that the appellant qualifies for PCA services and that he requires assistance with all of the tasks identified in the prior authorization request and re-evaluation. As set forth above, MassHealth did not make any modifications on the basis of medical necessity. Rather, MassHealth modified the request to account for waiver-sponsored services already in the home. MassHealth compared the schedule of waiver services – as submitted to MassHealth with the PCA application – with the specific tasks for which PCA assistance was requested, and properly denied time for PCA services which appeared to be duplicative of the waiver services. This is consistent with 130 CMR 503.007(B)(2), which prohibits MassHealth payment for services that are available “at no cost to the member including . . . any such services that are available through any agency of the local, state, or federal government. . . .” Although the appellant’s mother testified that the schedule and list of tasks do not accurately represent the scope of assistance actually provided by Senior Helpers, it is currently the only source of documentary evidence in this regard that has been submitted to MassHealth. As such, there is no basis to overturn the MassHealth determination.

This 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.

Samantha Kurkly
Hearing Officer
Board of Hearings

cc: Optum

