

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



CORRECTED

Appeal Decision: APPROVED

Appeal Number: 2200448

Decision Date: 3/22/2022

Hearing Date: 02/16/2022

Hearing Officer: Christopher Taffe

Appearances for Appellant:



Appearance for MassHealth:

Mary Jo Elliott, RN (Appeals Nurse and
Clinical Reviewer from OPTUM) (by
phone)



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

CORRECTED APPEAL DECISION

CORRECTED Appeal Decision:	APPROVED	Issue:	PA – PCA hours – PROM
Decision Date:	3/22/2022	Hearing Date:	02/16/2022
MassHealth’s Rep.:	M.J. Elliott, RN	Appellant’s Rep.:	■
Hearing Location:	Tewksbury MassHealth Enrollment Center (Remote)	Aid Pending:	Yes

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 January 7, 2022, MassHealth modified Appellant’s Prior Authorization (PA) request for 44.00 day and evening hours/week of Personal Care Attendant (PCA) services for the period from 1/29/2022 through 1/28/2023 by approving 39.50 day and evening PCA hours/week.¹ See Exhibit 1; 130 CMR 422.410 and 130 CMR 450.204. Appellant filed a timely appeal with the Board of Hearings on January 18, 2022. See 130 CMR 610.015(B); Exhibit 1. Challenging a determination of the scope of MassHealth assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Because of the timing of Appellant’s appeal filing and the effective dates of the PA period related to the request, Appellant received Aid Pending protected benefits for the pendency of this appeal; the amount of day and evening PCA hours protected while this appeal is pending is 41.25 hours/week. See Exhibit 1; 130 CMR 610.036.

¹ MassHealth approved in full the request for 2.0 “nighttime” hours per day (during the period from 12 midnight to 6:00 A.M.) of PCA assistance for the PA period. There is no appealable dispute about this decision and thus the entirety of the remaining text of this decision will focus only on the amount of assistance for the disputed “day and evening” hours, which run from 6:00 A.M. to 12 midnight.

Action Taken by MassHealth

MassHealth approved only a portion of the PCA time requested by Appellant; specifically MassHealth approved 39.50 day and evening PCA hours/week.

Issue

Is Appellant entitled to any adjustment which can serve to increase the amount of PCA time previously approved by MassHealth?

Summary of Evidence

Appellant's Son and Appeal Representative appeared by phone at hearing along with a worker from her PCA Provider, Tri-Valley Inc. (Tri-Valley). Ms. Elliott, a registered nurse, also appeared in to provide testimony on behalf of the OPTUM, the MassHealth contractor who helps to administer some of the agency's prior approval services, including that of the PCA program.

The MassHealth Personal Care Attendant program involves unskilled and unlicensed personnel who are hired to assist members with physical disabilities by providing paid time for hands-on assistance with a member's Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). The PA review process utilized by the MassHealth PCA program allows the agency to determine medical necessity for the minutes requested by the member and make "modifications" where appropriate; the PCA time approved by MassHealth must be based on the member's capabilities, bear a relationship to the member's diagnosis and request, and comply with the applicable MassHealth PCA regulations.

At the time of the PA request in question, Appellant is a [REDACTED] year old who lives in the community. She is legally blind, and her chronic conditions include osteoarthritis, COPD, and osteoporosis. She is at high risk for falls. In 2009 she fell and severed her femur, requiring surgical repair, and she has an extensive history of additional falls over the past few years. In 2021, the Appellant fell after a shower and fractured a hip. She is unsteady with a walker. She has a history of kidney disease, hearing loss, anemia, weight loss, and skin cancer on the face. Her legs have continued to get weaker with advanced age.

For the PA request at issue, Appellant's PCA provider, Tri-Valley, submitted a request for 2,636 minutes/week, which is equivalent to and/or rounded up to the nearest 15-minute increment of 44.00 hours/week. The MassHealth denial notice indicated that the agency approved the PCA time requested in full for all of the activities of request except for one, resulting in a reduction to 2,356 minutes or a grand total (after rounding) of 39.50 hours per week.

Specifically, Appellant requested 280 minutes/week of PCA assistance with the activity of Passive Range of Motion (PROM), which was broken down into 5 minutes, twice per day, seven days per week, for each of the (4) arm and leg extremities. MassHealth did not approve any PCA time at all

for this activity. MassHealth indicated that, usually, PROM assistance was covered in the PCA program for those who couldn't ambulate, or who were paralyzed, and the fact that Appellant was able to ambulate, even with assistance and medical equipment, and she was not someone with no functional ability. MassHealth also argued that the need for PROM from unskilled PCA personnel was contraindicated by the pins and injuries in Appellant's body caused by falls and fracture, and that it might be medically inappropriate to allow this.

In the appeal request filing in Exhibit 1, the Appeal Representative included a sheet titled "Passive Range of Motion Order", signed by Appellant's doctor on December 23, 2021, asking for the full 40 minutes of day for this PROM activity.

Appellant's son expressed dismay at the agency decision, in part because Appellant had received an approval from MassHealth, in the prior year, for this amount of PCA time, and he could not understand why it would be appropriate one year but no longer appropriate the following, as his mother was aging as an elderly [REDACTED]-year old., and it was unlikely that her overall physical well-being would be improving (and thus need less assistance). He also argued that, in addition to the limited walks, Appellant's doctor thought the PROM time was important for dealing and managing her osteoarthritis, and he just didn't know why the state was taking away assistance as she was approaching the end stage of her lifespan and it bordered on cruelty or disrespect to the elder. Specifically, Appellant received 41.25 hours/week of assistance last year, and, if this decision was upheld in MassHealth's favor, Appellant would receive less hours this year, which seemed counterintuitive to the Appeal Representative. The witness from the PCA provider verified that Appellant had received approval from MassHealth for PROM time for at least the past year.

Findings of Fact

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

1. Appellant's PCA provider, (Tri-Valley) submitted a request for submitted a request for 2,636 PCA minutes/week, rounded up to the nearest 15-minute increment of 44.00 hours/week. (Testimony and Exhibits 1 and 3)
2. MassHealth made one modification to the PCA request, denying in full the 280 minutes/week requested for assistance with PROM exercises on Appellant's four extremities. (Testimony and Exhibits 1 and 3)
3. Appellant is a [REDACTED]-year old who lives in the community. She is legally blind, and her chronic conditions include osteoarthritis, COPD, and osteoporosis. She is at high risk for falls. In 2009 she fell and severed her femur, requiring surgical repair, and she has an extensive history of additional falls over the past few years. In 2021, the Appellant fell after a shower and fractured a hip. She is unsteady with a walker. She has a history of kidney disease, hearing loss, anemia, weight loss, and skin cancer on the face. Her legs have continued to get weaker with advanced age. (Testimony and Exhibit 3)

4. Appellant's MD signed off on paperwork approving PROM exercises or time for Appellant. (Testimony and Exhibit 1)
5. Appellant has received approval for her PCA to perform PROM exercises on her extremities in the recent past, including the past year. (Testimony)
6. If the time for this disputed activity remains denied, the [REDACTED] year old Appellant would have less PCA hours approved for the current year (39.50 hours/week) than she had in the prior annual period (which was 41.25 hours/week). (Testimony and Exhibits 1 and 3)

Analysis and Conclusions of Law

The regulations concerning PCA Services are found at 130 CMR 422.000 et seq. 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*.” It is undisputed that this Appellant is a MassHealth member eligible for PCA services.

All requested PCA services must be medically necessary for prior authorization to be approved. A portion of the MassHealth regulation which applies to all providers, including the PCA program, and which describes what kind of services meet the definition of “*medical necessity*”, appears below:

130 CMR 450.204: Medical Necessity

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.

*(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...***

(Emphasis added.)

The relevant portion of 130 CMR 422.410 which further defines the specific ADLs and IADLs covered by this program reads as follows:

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

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;*
- (4) dressing: 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 or 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 PCA services; and*
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.*

(Bolded emphasis added.)

Another regulation often relevant to this type of appeal is found in 130 CMR 420.412.

422.412: Non-covered 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.

(Bolded emphasis added.)

In this case, the sole dispute involves whether this elderly senior member should continue to receive PCA time for PROM services. MassHealth bases its argument on a facet of medical necessity regulation, suggesting it may not be medically appropriate for this member to receive such assistance from the individual PCA. I disagree. While MassHealth's contention that passive range of motion exercises usually involve those with extremely limited limb functionality, it is noted in this case that we are dealing with a [REDACTED]-year old member whose mobility is limited. While the agency may have a limited point in bringing up the risks and contraindication from having a PCA do the work, the PCA program allows PCA's to do exercises for appropriate patients. Moreover, Appellant's doctor believes she would benefit from the PROM activity, and her son's testimony corroborated the values that this elderly member gets from this assistance. Finally, and perhaps most significantly, this member was awarded PCA time for this activity last year, and to cut it to zero (and thereby reduce the total assistance for a [REDACTED] ear old member) does not seem appropriate or justified by the record.

Accordingly, I conclude that the Appellant is entitled to this PCA time for assistance with PROMs. This appeal is APPROVED.

Order for MassHealth/OPTUM

Within 30 days of the date of this decision,

- Remove the Aid Pending protection of PCA benefits.
- Adjust the approved PCA time in accordance with this decision to allow for the full 44.00 day and evening hours/week of PCA time for the remainder of the current PA period running from 1/29/2022 through 1/28/2023.²
- Send notice to Appellant and her PCA provider of the new amount of approved time in writing.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact OPTUM through either the MassHealth Prior Authorization Unit (1-800-862-8341) or general MassHealth Customer Service (1-800-841-2900). 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc:



OPTUM/MassHealth OLTSS

² Appellant and/or her Appeal Representative son may contact the PCA provider Tri-Valley to discuss any issues and the potential for reimbursement for the portion of the PA period that has already passed.