

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Dismissed in part	Appeal Number:	2200467
Decision Date:	3/29/2022	Hearing Date:	02/15/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:




Appearance for MassHealth:

Via telephone:
Donna Burns, 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:	Denied in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	3/29/2022	Hearing Date:	02/15/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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 December 14, 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 January 18, 2022 (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. She testified that the documentation showed that the appellant is a MassHealth member over the age of 65 with a primary diagnosis of multiple sclerosis (secondary progressive) and dementia. The appellant is legally blind. The appellant was represented at hearing via telephone by her surrogate and the functional skills trainer from the Tri-Valley PCA department.

The MassHealth representative testified that the appellant's personal care management (PCM) agency, Tri-Valley, submitted a prior authorization request for PCA services on December 1, 2021, requesting 67 hours and 0 minutes of day/evening hours per week and 2 nighttime hours per night, 7 nights per week for dates of service of January 22, 2022 through January 21, 2023. MassHealth modified the request to 59 hours and 0 minutes of day/evening hours per week and approved the 2 nighttime hours per night.

At hearing, the parties were able to resolve the disputes related to PCA assistance with the following activities of daily living (ADLs): mobility¹, repositioning², and bladder care³. PCA assistance with the ADL of undressing remains at issue.

Undressing

The appellant requested 25 minutes, 1 time per day, 7 days per week for undressing. MassHealth modified the request to 20 minutes, 1 time per day, 7 days per week because the time requested was longer than ordinarily required.

The MassHealth representative testified that the appellant requested and was approved for 25 minutes, 1 time per day, 7 days per week for dressing. Typically, undressing takes a little less time than dressing. She explained that MassHealth considers dressing as the morning routine (getting out of pajamas and into clothes) and undressing as the evening routine (getting out of clothes and into pajamas). She also noted that the appellant was approved for 20 minutes per day for undressing last year.

The appellant's representatives testified that in the morning, she puts leg braces on both legs. She also applies a brace for the right hand. It takes a while in the morning to undress from her night shirt because she is usually completely soaked due to urinary incontinence. Getting the appellant out of her soaked night shirt takes time. Additionally, the appellant explained that with multiple sclerosis she is weaker at night and things take longer to do.

The MassHealth representative responded that PCA assistance with cleaning up after incontinence is included in the time allowed for bladder care.

¹ Mobility was fully restored as requested to 5 minutes, 8 times per day, 7 days per week.

² Repositioning was modified to 3 minutes, 8 times per day, 7 days per week.

³ Bladder care was modified to 25 minutes, 8 times per day, 7 days per week.

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 multiple sclerosis (secondary progressive) and dementia. She is also legally blind. (Testimony and Exhibit 4).
2. MassHealth received a prior authorization request for PCA services on December 1, 2021, requesting 67 hours and 0 minutes of day/evening hours per week and 2 nighttime hours per night, 7 nights per week for dates of service of January 22, 2022 through January 21, 2023 (Testimony and Exhibit 4).
3. MassHealth modified the request to 59 hours and 0 minutes of day/evening hours per week and approved the 2 nighttime hours per night (Testimony and Exhibit 4).
4. At hearing, the parties were able to resolve disputes related to PCA assistance with the following ADLs: mobility, repositioning, and bladder care (Testimony).
5. The appellant seeks time for PCA assistance with undressing as follows: 25 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
6. MassHealth modified the request to 20 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
7. The appellant wakes up in the morning with her night shirt completely soaked due to urinary incontinence (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.

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

Regarding the appellant's request for undressing, the appeal is denied. Even with the soaked night shirt in the morning taking some extra time to remove, the appellant has not demonstrated that PCA assistance with undressing takes longer than the time approved. Additionally, there is time included for clothing management, hygiene, and cleaning up after incontinence in the time allotted for bladder care, which was fully restored as requested. For this reason, the appellant has not shown that any further PCA assistance with undressing is medically necessary.

For these reasons, the appeal is denied in part and dismissed in part.

Order for MassHealth

Implement the agreements made at hearing for mobility, repositioning, and bladder care.

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, Attn: Optum Appeals Coordinator, P.O.
Box 159108, Boston, MA 02215

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