

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Denied in part	Appeal Number:	2201272
Decision Date:	6/1/2022	Hearing Date:	04/29/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN

Interpreter:

Natalia - ITI # 254685



*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; Approved in part; Denied in part	Issue:	Prior Authorization – PCA
Decision Date:	6/1/2022	Hearing Date:	04/29/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	Family
Hearing Location:	Remote	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 January 12, 2022, MassHealth modified the appellant's prior authorization request for personal-care-attendant services. (Exhibit 2; 130 CMR 422.000.) The appellant filed this appeal in a timely manner on February 21, 2022.¹ (Exhibit 3; 130 CMR 610.015(B); EOM 21-17 (Nov. 2021).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal-care-attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining allowing fewer hours of personal-care-attendant services than were requested.

¹ This appeal was dismissed by the Board of Hearings because it was not signed by the appellant. A signed appeal was submitted on March 17, and this matter was scheduled for hearing.

Summary of Evidence

The appellant is an elderly man who lives with his elderly spouse. His primary diagnosis is left-sided hemiparesis following a stroke. On or around January 11, 2022, the appellant's personal-care management agency submitted a prior authorization request on his behalf requesting 31 hours and 45 minutes of day/evening personal-care-attendant ("PCA") services per week and two hours per night. The prior authorization period for this request runs from January 23, 2022 through January 22, 2023. On January 12, 2022, MassHealth modified this request, authorizing 28 hours and 15 minutes of day/evening hours per week. The requested nighttime hours were approved. In making this change, MassHealth modified four categories of assistance, reducing: mobility by 42 minutes per week, right-sided passive range-of-motion by 105 minutes per week, oral care by 42 minutes per week, and hair care by 14 minutes per week.

The appellant's representatives testified that, in addition to being paralyzed on the left side, the appellant has started suffering from memory and vision loss. They testified that he has become far less stable in 2022. Early in the year he fell and fractured his left arm or shoulder.² During the hearing, the parties resolved their disagreements with regards to mobility, oral care, and hair care. MassHealth restored all of the requested time for mobility, allowed one extra minute twice per day per oral care, and the appellant accepted the modified hair grooming time.³

The single remaining issue was the time for the PCA to assist with passive range-of-motion exercises. The appellant had requested 15 minutes per side of his body. This was further broken down on the request as seven minutes for each upper extremity and eight minutes per lower extremity. MassHealth's representative testified that the original reviewer denied time for the right side because the appellant can move those extremities himself, and therefore the exercises are not "passive." The appellant's representatives testified that the PCA must fully manipulate the appellant's left extremities in order to maintain blood flow and muscle tone. However, they testified that the appellant's right side has become strained because he needs to rely on it for everything. They testified that he walks with a walker and physical assistance, but that his right has to bear all of this weight when using the walker. They described exercises that the PCA does for both the right and left hands: it is placed in a bath of warm water and the PCA stretches and massages the hand. There are some exercises that the appellant does on the right side on his own, though the appellant still requires set-up assistance.

Upon learning that the appellant had fallen and broken their left arm or shoulder, MassHealth's representative was concerned that they were still doing passive range-of-motion exercises. She agreed that the exercises performed on the appellant's right hand sounded as though they should qualify, but she felt that the appellant should use the time approved for the left upper extremity to work the right upper extremity until the break has healed. Then she suggested that they appellant

² The appellant's representatives testified through an interpreter. Sometimes the broken bone was interpreted as the shoulder, other times it was the arm.

³ The total time restored was therefore 56 minutes per week. (42 minutes of mobility, plus 14 minutes for oral care.)

submit an adjustment request to restore the left-sided exercises once the appellant's physician clears him to resume. The appellant's representatives asked if MassHealth was aware of some doctor telling them to stop the exercises, because they had not been told to stop by any doctors. They testified that the PCA removes the cast to perform the exercises on the left upper extremity. They estimated the total amount of time spent on range-of-motion exercises to be between 20 and 35 minutes per day.

Findings of Fact

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

1. The appellant is an elderly man with left-sided hemiparesis. (Exhibit 4.)
2. On or around January 11, 2022, a prior authorization request for PCA services sought 31 hours and 45 minutes of day/evening services per week and two hours per night for the period of January 23, 2022 through January 22, 2023. (Exhibit 4.)
3. On January 12, 2022, MassHealth modified this request, authorizing 28 hours and 15 minutes of day/evening hours per week. The requested nighttime hours were approved. MassHealth modified four categories of assistance: mobility, passive range-of-motion, oral care, and hair care. (Exhibit 2.)
4. The parties agreed to that the appellant required all of the requested time for mobility, and two extra minutes per day for oral care. The parties agreed to the modified amount of time for hair care. In total, MassHealth restored 56 minutes per week. (Testimony by MassHealth's and the appellant's representatives.)
5. The appellant's PCA performs passive range-of-motion exercises on the appellant's paralyzed, left extremities. The PCA also performs some of the exercises on the appellant's right hand, particularly stretching and flexing the appellant's right hand in a warm bath. The appellant has not been instructed by his medical care team to stop exercising while his fracture heals. (Testimony by the appellant's representatives.)

Analysis and Conclusions of Law

MassHealth covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental ADLs ("IADLs"), but who can be appropriately cared for in the home. (See 130 CMR 422.416(A).) These services must be prescribed by a physician or nurse practitioner who oversees the member's health care and MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

As a preliminary matter, this appeal is DISMISSED in part with regards to the modifications MassHealth made to mobility, oral care, and hair grooming. The parties agreed between themselves

to the appropriate amount of time needed to provide assistance to the appellant in these categories. (See 130 CMR 610.051(B).)

The remaining dispute is regarding passive range-of-motion exercises. The regulation defines this category of assistance as “physically assisting a member to perform range-of-motion exercises” (130 CMR 422.410(A)(5).) MassHealth initially denied the request for assistance with right-sided exercises because the appellant’s right side is not paralyzed. Any assistance provided with self-powered exercises would not qualify as “passive,” and to the extent that a PCA is involved it would be for a non-covered service such as “supervision, guiding, or coaching.” (See 130 CMR 422.412.) At the hearing, MassHealth’s representative agreed that some of the exercises performed on the appellant’s right hand sounded as though they should qualify, but she was unwilling to authorize time for range-of-motion exercises to be performed on the appellant’s broken, left arm.

I find that the appellant is entitled to time for passive range-of-motion exercises for both upper extremities. The appellant’s paralyzed arm was not broken at the time the prior authorization request was submitted. In fact, the time for the left arm passive range-of-motion exercises was approved. While breaking his arm may have warranted an adjustment request to update MassHealth regarding what assistance he requires, the appellant’s representatives testified that they were never told to stop passive range-of-motion exercises on the appellant’s left upper extremity.⁴ At the hearing, MassHealth agreed that some time should be allowed for the passive range-of-motion exercises being performed on the appellant’s right hand, therefore the seven minutes identified for right upper extremity passive range of motion will be APPROVED in part. The appellant’s representatives provided no testimony regarding right lower extremity exercises. Furthermore, they acknowledged that some of the appellant’s right-sided exercises are not “passive,” but rather performed under the appellant’s own power. Therefore, the eight minutes per day requested for right-sided, lower extremity passive range-of-motion exercises is DENIED in part.⁵

Order for MassHealth

Recalculate the appellant’s weekly PCA hours in accordance with this decision. Allow all time requested for mobility, three minutes, twice per day for oral care, and 22 minutes per day for passive range-of-motion exercises. Allow the increased time retroactively to the start of the beginning of this prior authorization period, January 23, 2022.

⁴ MassHealth’s representative is a registered nurse, and I do not doubt her qualifications to opine as to the appropriateness of performing range-of-motion exercises on a broken extremity. However, the appellant was not seen during the hearing, and there was no clinical information detailing the nature of the appellant’s injury. Therefore, I defer to the appellant’s medical care team to convey medical instructions to the appellant and his caregivers.

⁵ MassHealth’s modified time started at 28 hours and 15 minutes per week. This decision restores 105 minutes per week, or one hour and 45 minutes. The manner of calculation of weekly time involves rounding, but the total weekly day/evening hours should be close to 30 hours 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.

Christopher Jones
Hearing Officer
Board of Hearings

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