

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in Part;
Denied in Part

Appeal Number: 2202111

Decision Date: 5/31/2022

Hearing Date: 04/26/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:
Pro se

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:	Approved in Part; Denied in Part	Issue:	Personal Care Attendant Services
Decision Date:	5/31/2022	Hearing Date:	04/26/2022
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	Pro se
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.

Jurisdiction¹

Through a notice dated 03/03/2022, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 30 hours and 30 minutes (30:30) of day/evening hours per week plus 2 daily night time attendant hours to 26:30 day/evening hours per week plus 2 daily night time attendant hours for the dates of service from 04/18/2022 to 04/17/2023 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 03/14/2022 (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 a prior authorization request (PA) for PCA services was received on appellant's behalf from her PCA provider, The ARC of South Shore Inc. ("provider"), and is a re-evaluation request for the dates of service of 04/18/2022 to 04/17/2023. The appellant's PCA time is protected at 30:30 and 2 hours of nighttime attendant services pending this appeal. In the PA request for PCA services, the provider requested 30:30 day/evening hours per week plus 2 daily nighttime attendant hours. The appellant is an adult woman who has diagnoses of fibromyalgia, COPD, asthma, pain, anxiety, and depression (Exhibit 4).

The Optum representative testified that on 03/03/2022 MassHealth modified the PCA request to 26:30 day/evening hours per week. Nighttime attendant hours were approved as requested (2 hours per night). Modifications were made to the request for PCA services in the activities of daily living (ADL) tasks of mobility and assistance with medication, and in the instrumental activities of daily living (IADL) tasks of laundry, shopping, and housekeeping.

Mobility

The appellant's provider requested on the appellant's behalf 5 minutes, 6 times per day, 7 days per week (5 X 6 X 7²) for assistance with mobility. The provider noted that the appellant needs assistance with transfers because she is fatigued and has minimal endurance. MassHealth modified the request to 2 X 6 X 7. The MassHealth representative testified that the provider requested no time for assistance with transfers and that mobility is assistance required from room to room. This time does not include time to assist the appellant to and from the bathroom or to the kitchen for meals. That time

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.

was approved as requested.

The appellant testified that she needs assistance from the bedroom to the bathroom and to the kitchen, then to the couch. She has a hard time with the walker because of her breathing problems. At times she can do it herself, but not always. It takes about 2 minutes to get up from bed and 5-6 minutes to get up or down stairs.

Assistance with Medications

The appellant's provider requested assistance with medication as follows: 10 X 1 X 1 to pre-fill the planner; 2 X 3 X 7 to assist administering medications; 1 X 8 X 7 (no reason given); and 5 X 4 X 7 for assistance with the nebulizer. MassHealth approved the time, except for the time to pre-fill the planner and for the time requested with no reason given. The MassHealth representative testified that time was approved to pre-fill the medication box during the nighttime hours and therefore, the time requested during the day is duplicative.

The appellant testified that the 1 X 8 X 7 was requested for assistance handing her the inhaler and helping her rinse her mouth afterwards.

IADL's – Laundry, Shopping and Housekeeping

The appellant's provider requested assistance with IADL's as follows: Laundry – 90 X 1 X 1; Shopping – 75 X 1 X 1; and Housekeeping – 70 X 1 X 1, noting that she is dependent for assistance with these tasks. MassHealth modified the requests as follows: Laundry – 60 X 1 X 1; Shopping – 60 X 1 X 1; and Housekeeping – 60 X 1 X 1. The MassHealth representative testified that the documentation does not support the requested time, and the modified time should be adequate for someone with the appellant's needs.

The appellant first addressed Laundry. She testified that she wears incontinence pads and has an increased laundry need due to incontinence. Next, regarding Shopping, the appellant stated that the nearest food store is 15 minutes away from her home and the PCA needs to shop twice a week. Finally, regarding Housekeeping, the appellant testified she has “a lot of illnesses and her home needs to be cleaned daily.”

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 from the PCA provider, The ARC of South Shore, Inc. (“provider”). It is a re-evaluation request for the dates of service of 04/18/2022 to 04/17/2023 (Testimony; Exhibit 4).

2. In the PA request for PCA services, the provider requested 30:30 day/evening hours per week plus 2 daily nighttime attendant hours (Testimony; Exhibit 4).
3. The appellant's PCA time is protected at 30:30 day/evening hours per week plus 2 daily nighttime attendant hours pending this appeal (Testimony).
4. The appellant is an adult woman who has diagnoses of fibromyalgia, COPD, asthma, pain, anxiety, and depression (Testimony; Exhibit 4).
5. On 03/03/2022 MassHealth modified the PCA request to 26:30 day/evening hours per week. MassHealth approved the nighttime attendant hours as requested (2 hours per night) (Testimony; Exhibits 1 and 4).
6. The appellant's provider requested on the appellant's behalf 5 minutes, 6 times per day, 7 days per week (5 X 6 X 7) for assistance with mobility. The provider noted that the appellant needs assistance with transfers because she is fatigued and has minimal endurance (Testimony; Exhibits 1 and 4).
7. MassHealth modified the request for assistance with mobility to 2 X 6 X 7 (Testimony; Exhibits 1 and 4).
8. Time for assistance with mobility is transfers from room to room but does not include assistance to/from the bathroom or kitchen for meals (Testimony).
9. The appellant's provider requested assistance with medication as follows: 10 X 1 X 1 to pre-fill the planner; 2 X 3 X 7 to assist administering medications; 1 X 8 X 7 (no reason given); and 5 X 4 X 7 for assistance with the nebulizer (Testimony; Exhibit 4).
10. MassHealth denied the PCA time requested to pre-fill the medication planner and the time requested with no reason given (Testimony; Exhibit 4).
11. PCA time was approved as requested during nighttime hours to pre-fill the medication planner (Testimony; Exhibit 4).
12. The appellant testified that the 1 X 8 X 7 was requested to assist her with her inhaler and to help her rinse her mouth after using it (Testimony).
13. The appellant's provider requested assistance with IADL's as follows: Laundry – 90 X 1 X 1; Shopping – 75 X 1 X 1; and Housekeeping – 70 X 1 X 1, noting that she is dependent for assistance with these tasks (Testimony; Exhibit 4).
14. MassHealth modified the requests as follows: Laundry – 60 X 1 X 1; Shopping – 60 X 1 X 1; and Housekeeping – 60 X 1 X 1 (Testimony; Exhibit 4).

15. The appellant testified that she is incontinent of bladder and has increased laundry needs because of her incontinence (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).

The appellant's provider requested on the appellant's behalf 5 X 6 X 7 for assistance with mobility. The provider noted that the appellant needs assistance with transfers because she is fatigued and has minimal endurance. MassHealth modified the request for assistance with mobility to 2 X 6 X 7. The MassHealth representative testified that it appears the provider intended to request time for transfers and did not adequately explain the need for assistance with mobility, which is assistance from room to room. The

appellant testified that she needs assistance from her bedroom to the living area, up and down the stair, which takes about 5 – 6 minutes. Her testimony supports MassHealth's modification. Therefore, this portion of the appeal is denied.

The appellant's provider requested assistance with medication as follows: 10 X 1 X 1 to pre-fill the planner; 2 X 3 X 7 to assist administering medications; 1 X 8 X 7 (no reason given); and 5 X 4 X 7 for assistance with the nebulizer. MassHealth denied the PCA time requested to pre-fill the medication planner and the time requested with no reason given. In support of its modification, MassHealth testified that PCA time was approved as requested during nighttime hours to pre-fill the medication planner. The appellant testified that the 1 X 8 X 7 was requested to assist her with her inhaler and to help her rinse her mouth after using it. The appellant's testimony concerning the time for assistance with the inhaler is supported by the documentation; however, there is no evidence to show that MassHealth's denial of time to pre-fill the medication box is incorrect. This portion of the appeal is approved with regard to the 1 X 8 X 7 (assistance with inhaler) but denied with regard to the 10 X 1 X 1 (pre-fill medication planner).

The appellant's provider requested assistance with IADL's as follows: Laundry – 90 X 1 X 1; Shopping – 75 X 1 X 1; and Housekeeping – 70 X 1 X 1, noting that she is dependent for assistance with these tasks. MassHealth modified the requests as follows: Laundry – 60 X 1 X 1; Shopping – 60 X 1 X 1; and Housekeeping – 60 X 1 X 1. The appellant testified that she is incontinent of bladder and has increased laundry needs because of her incontinence. Accordingly, the portion of the appeal that concerns the time for assistance with Laundry is approved. However, the appellant did not specifically show how much PCA time is required for shopping and housekeeping. Thus, she was unable to show that MassHealth's other modifications of time for IADL's is incorrect. Accordingly, she has not met her burden of proof and the modifications for time requested for Shopping and Housekeeping are denied.

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

Order for MassHealth

Release aid pending. Restore all time, as requested, in the areas of assistance with medication – inhaler (1 X 8 X 7) and Laundry (90 X 1 X 1). 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

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215