

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part;
Dismissed

Appeal Number: 2202213

Decision Date: 5/19/22

Hearing Date: 05/12/2022

Hearing Officer: Patricia Mullen

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliott, RN, Optum

Interpreter: Ada 261928



*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; Dismissed	Issue:	Personal Care Attendant services
Decision Date:	5/19/22	Hearing Date:	05/12/2022
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	Spouse/authorized rep
Hearing Location:	Chelsea MassHealth Enrollment Center	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 March 7, 2022, MassHealth modified the appellant's request for prior authorization for 37.5 hours a week for day/evening PCA services and 14 hours a week for a nighttime attendant (NTA), and approved 35.25 hours per week for day/evening PCA services and 14 hours for NTA, because MassHealth determined that time requested for PCA assistance with certain activities did not meet criteria under MassHealth medical necessity and PCA regulations. (Exhibit 1; 130 CMR 422.410; 450.204). The appellant filed this appeal in a timely manner on March 23, 2022. (see 130 CMR 610.015(B) and Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410 in determining that time requested for PCA assistance with certain activities did not satisfy the criteria set forth in the PCA and medical necessity regulations.

Summary of Evidence

The appellant was represented telephonically at the hearing by his spouse/authorized representative, who testified through an interpreter. (Exhibit 2). MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for personal care attendant (PCA) services. The appellant's provider, Center for Living and Working, submitted a re-evaluation request for prior authorization for 37.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on February 24, 2022. (Exhibit 5, p. 3). By notice dated March 7, 2022, MassHealth approved 35.25 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service March 19, 2022 to March 18, 2023. (Testimony, exhibits 1, 5, p. 3). The appellant lives at home with his spouse and two minor children; his diagnoses include herniated disks, carpal tunnel syndrome, and chronic pain, with limited mobility in his left leg due to clots, inability to bend at the waist, shoulder and cervical pain when lifting; he uses a walker and has poor balance. (Exhibit 5, p. 8). The appellant's spouse works full time outside the home. (Exhibit 5, p. 8). The appellant's spouse testified that she works as a certified nurse's aide and works 7 days a week from early morning into the night.

The MassHealth representative testified that MassHealth modified the time requested for PCA assistance with nail care, snack preparation, housekeeping, and shopping. After hearing testimony at the hearing, MassHealth approved 15 minutes a week for PCA assistance with nail care. The MassHealth representative noted that the approved time allows for 5 minutes, once a week for fingernail trim, and 5 minutes, twice a week for toenail trim. The appellant's representative agreed to the 15 minutes a week allowed for PCA assistance with nail care and withdrew the appeal as to that issue. The appeal of the modification of time for PCA assistance with nail care is dismissed.

The issues remaining in dispute are the modification of time requested for PCA assistance with shopping and housekeeping, and the denial of time requested for PCA assistance with snack preparation. (Testimony).

Meal Preparation: The appellant's provider requested 15 minutes a day for PCA assistance with preparing breakfast and 30 minutes a day for PCA assistance with preparing lunch, and MassHealth approved such time in full. (Exhibit 5, p. 22, testimony). The appellant's provider requested 5 minutes a day for PCA assistance with preparing a snack and MassHealth denied such time. (Testimony). The nurse evaluator from the appellant's provider agency wrote that the appellant is unable to prepare meals, set up or clean up, due to chronic back pain, shoulder pain, limited mobility, weakness, and fall risk. (Exhibit 5, p. 23). The MassHealth representative testified that snacks are something that the appellant's spouse could provide for him.

The appellant's representative stated that she leaves for work in the early morning and is not at home to assist with snacks for the appellant. The appellant's representative stated that the PCA provides the appellant with whatever snacks he asks for during the day. The appellant's representative stated that she was not sure what the appellant ate for snacks and would have to ask the PCA.

Housekeeping: The appellant's provider requested 45 minutes a week for PCA assistance with housekeeping and MassHealth approved 30 minutes a week for PCA assistance with housekeeping. (Testimony, exhibit 5, p. 24). The nurse evaluator from the appellant's provider agency wrote that the appellant is unable to clean up after personal tasks, make/change bed, sweep, vacuum, or clean due to chronic back pain, limited mobility, should pain, weakness, and fall risk. (Exhibit 5, p. 24). The MassHealth representative stated that pursuant to MassHealth regulations, when a member lives with family members, the family members are expected to provide assistance with routine housekeeping. The MassHealth representative stated that MassHealth allowed 30 minutes a week for PCA assistance with cleaning the appellant's personal area.

The appellant's representative stated that she shares a bed and bathroom with the appellant. The appellant's representative stated that the appellant sweats a lot and the PCA changes the sheets. The appellant's representative noted that the appellant stays in bed most of the day, but the PCA helps him up and makes the bed every day. The appellant's representative noted that the appellant's PCA washes the breakfast dishes. The MassHealth representative stated that washing dishes is under the meal preparation and clean up activity, not housekeeping.

Shopping: The appellant's provider requested 45 minutes a week for PCA assistance with shopping and MassHealth approved 15 minutes per week. (Testimony, exhibit 5, p. 24). The MassHealth representative stated that pursuant to MassHealth regulations, when a PCA recipient lives with family members, the family members are expected to provide assistance with shopping. The MassHealth representative stated that the appellant's shopping should be included with the family shopping. The MassHealth representative stated that over the course of a month, the appellant may need assistance with picking up personal items and prescriptions. MassHealth averaged out such time and approved 15 minutes a week for PCA assistance with shopping.

The appellant's representative stated that the appellant refuses to accept that he is disabled and likes to go out shopping with the PCA. The appellant's representative stated that it is good for the appellant to get out of the house and the PCA takes him to the local pharmacy.

Findings of Fact

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

1. The appellant's provider, Center for Living and Working, submitted a re-evaluation request for prior authorization for 37.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on February 24, 2022.

2. By notice dated March 7, 2022, MassHealth approved 35.25 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service March 19, 2022 to March 18, 2023.
3. The appellant lives at home with his spouse and two minor children; his diagnoses included herniated disks, carpal tunnel syndrome, and chronic pain, with limited mobility in his left leg due to clots, inability to bend at the waist, shoulder and cervical pain when lifting; he uses a walker and has poor balance.
4. The appellant's spouse works full time outside the home 7 days a week from early morning into the night.
5. After hearing testimony at the hearing, MassHealth approved 15 minutes a week for PCA assistance with nail care.
6. MassHealth approved 15 minutes a day for PCA assistance with preparing breakfast and 30 minutes a day for PCA assistance with preparing lunch.
7. The appellant's provider requested 5 minutes a day for PCA assistance with preparing a snack and MassHealth denied such time.
8. The appellant's provider requested 45 minutes a week for PCA assistance with housekeeping and MassHealth approved 30 minutes a week for PCA assistance with housekeeping.
9. The appellant shares a bed and bathroom with his spouse.
10. The appellant stays in bed most of the day, but the PCA helps him up and makes the bed every day; the PCA sometimes changes the sheets due to the appellant's excessive sweating.
11. The appellant's provider requested 45 minutes a week for PCA assistance with shopping and MassHealth approved 15 minutes per week for PCA assistance with shopping.

Analysis and Conclusions of Law

MassHealth covers PCA 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 PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for 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) 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth 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 MassHealth 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.

(130 CMR 450.204(A)-(C)).

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.

(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 PCM 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 PCA 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.

(130 CMR 422.410).

Noncovered 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.

(130 CMR 422.412).

After hearing testimony at the hearing, MassHealth approved 15 minutes a week for PCA assistance with nail care. The appellant's representative did not dispute such time and withdrew the appeal of MassHealth's modification of time for PCA assistance with nail care. Because this issue resolved at hearing, the appeal is dismissed as to this issue. (130 CMR 610.035(A)(2), (8)).

MassHealth modified the time requested for PCA assistance with housekeeping and shopping, and denied the time requested for PCA assistance with snack preparation.

MassHealth approved the time requested for PCA assistance with breakfast preparation and lunch preparation, but argued that the spouse is responsible for snack preparation. The appellant's spouse works full time and is out of the house from early morning until the evening. The appellant's spouse is not in the home to provide assistance with getting the appellant a snack. MassHealth does not dispute that the appellant requires PCA assistance with breakfast and lunch preparation, and thus it follows that the appellant also needs assistance with snack preparation. The denial of time requested for PCA assistance with snack preparation is reversed and 5 minutes a day is approved for PCA assistance with snack preparation. The appeal is approved as to this issue.

When a member is living with family members, the family members will provide assistance with IADLs such as housekeeping. Routine housekeeping should include those needs of the member. (130 CMR 422.410(C)(1)). The appellant lives with his spouse and children. The PCA is not responsible for housekeeping for the appellant's family, only for his personal need. The appellant shares a bed, bedroom, and bathroom with his spouse and the PCA is not responsible for the spouse's housekeeping needs. The appellant's representative stated that the appellant sweats and the PCA needs to change the sheets. Making the bed would be a shared responsibility between the appellant and spouse. MassHealth approved 30 minutes a week for PCA assistance with the appellant's personal housekeeping needs. 30 minutes a week for PCA assistance with the appellant's housekeeping needs, such as occasionally changing the sheets, is reasonable and MassHealth's modification is upheld. The appeal is denied as to MassHealth's modification of time for PCA assistance with housekeeping.

When a member is living with family members, the family members will provide assistance with IADLs such as shopping. Routine shopping should include those needs of the member. (130 CMR 422.410(C)(1)). MassHealth approved time for PCA assistance with picking up the appellant's prescriptions and miscellaneous personal products. MassHealth determined such errands on a monthly basis and averaged the time out to 15 minutes a week. There is no evidence that the appellant has any extraordinary shopping needs resulting from his medical conditions. The appellant's representative stated that the appellant likes to go out to do his own shopping with the PCA and getting outside is good for him. Shopping is a covered PCA task, however taking the appellant out for socialization or to simply get out of the house, while beneficial to the appellant, is not a covered PCA task. The family's shopping should include the appellant's shopping needs pursuant to MassHealth regulations. An average of 15 minutes a week for PCA assistance with shopping is sufficient to meet the appellant's personal needs and MassHealth's modification is upheld. The appeal of MassHealth's modification of time requested for PCA assistance with shopping is denied.

Order for MassHealth

If MassHealth has not already done so, make the adjustment agreed to at the hearing for PCA assistance with nail care; approve in full the time requested for PCA assistance with snack preparation; adjustments are retroactive to March 19, 2022.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

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