

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2202303

Decision Date: 05/23/2022

Hearing Date: 05/12/2022

Hearing Officer: Patricia Mullen

Appearance for Appellant:



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:	Denied	Issue:	Personal Care Attendant (PCA) services
Decision Date:	5/23/2022	Hearing Date:	05/12/2022
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	Pro se; surrogate
Hearing Location:	Chelsea MassHealth Enrollment Center	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 March 18, 2022, MassHealth modified the appellant's request for prior authorization for 23.5 hours a week for day/evening PCA services and 14 hours a week for a nighttime attendant (NTA), and approved 20.5 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 25, 2022 and received aid pending appeal. (130 CMR 610.015(B) and Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal. (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 appeared telephonically at the hearing and authorized her surrogate to participate in the hearing with her. 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, The Arc of the South Shore, submitted a re-evaluation request for prior authorization for 23.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on March 8, 2022. (Exhibit 4, p. 3). By notice dated March 18, 2022, MassHealth approved 20.5 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service May 22, 2022 to May 21, 2023. (Testimony, exhibits 1, 4, p. 3).

The appellant lives at home with her spouse; her diagnoses include lumbagosciatica and severe asthma. (Exhibit 4, p. 9). The MassHealth representative testified that MassHealth modified the time requested for PCA assistance with nail care, medication planner, and bowel care, and denied the time requested for PCA assistance with passive range of motion (PROM).

PROM: The appellant's provider requested 5 minutes, once a day for PROM to the appellant's 4 extremities, for a total of 20 minutes a day, or 140 minutes per week. (Exhibit 4, p. 12). The nurse evaluator from the appellant's provider agency wrote that passive range of motion is to prevent stiffness and maintain current level of function. (Exhibit 4, p. 12). The MassHealth representative stated that MassHealth denied the time requested for PCA assistance with PROM because the appellant has active functioning in her extremities and can participate in range of motion exercises. The MassHealth representative explained that passive range of motion is performed when a member is unable to move a body segment and the caregiver moves it for the member. The MassHealth representative stated that PROM is a task performed for bed bound or immobilized individuals and is done to avoid contractures. The MassHealth representative testified that PROM does not increase or maintain functioning and does not strengthen a limb, because the caregiver is moving the limb for the member. The MassHealth representative noted that the appellant is ambulatory and can move her limbs independently. The MassHealth representative testified that PROM is not indicated for a person with functioning limbs and could be contraindicated in light of the appellant's pain and sciatica. The MassHealth representative state that an unskilled PCA could cause harm moving the appellant's limbs. The MassHealth representative stated that PROM is not skilled physical therapy used to prevent stiffness in someone with sciatica. The MassHealth representative reiterated that PROM helps with stiffness from contractures for an immobilized person.

When asked to explain what type of PROM the appellant is receiving, the appellant's surrogate responded that the appellant has pain in her spinal cord and back and has a difficult time moving around. The appellant's surrogate stated that the appellant needs help getting dressed and her PCA

hours should stay the same. The appellant's surrogate noted that there is a question of whether the appellant should be receiving physical therapy.

Nail care: The appellant's provider requested 20 minutes a week for PCA assistance with nail care, and MassHealth approved 10 minutes a week for PCA assistance with nail care. (Exhibit 4, p. 14, testimony). The MassHealth representative stated that nail care is the trimming or filing of fingernails and toenails and is usually required once a week. The MassHealth representative stated that 20 minutes is longer than ordinarily required given that the task is done every week. The MassHealth representative stated that nail care does not include painting nails. The MassHealth representative stated that basic maintenance of the nails should only take 10 minutes a week.

The appellant's surrogate stated that the appellant is in pain and it would be nice to have 20 minutes for nail care. The appellant stated that the PCA trims and files her fingernails and toenails, when needed. The appellant stated that sometimes the PCA paints her fingernails. The appellant stated that she does not watch the clock to see how long it takes.

Bowel care: The appellant's provider requested 15 minutes, once a day, for PCA assistance with bowel care, and MassHealth approved 13 minutes, once a day, for PCA assistance with bowel care. (Exhibit 4, p. 18, testimony). The MassHealth representative stated that the modification was based on the time requested for PCA assistance with bladder care. The MassHealth representative pointed out that the appellant's provider requested 10 minutes, 6 times a day, for PCA assistance with bladder care and such task is identical to the bowel care task, but for some extra hygiene. For both bladder and bowel care, the nurse evaluator from the provider agency wrote that the PCA is to physically assist with toilet hygiene, clothing management, and changing absorbent product. (Exhibit 4, p. 18). The MassHealth representative stated that it might take a couple of extra minutes to assist with hygiene after a bowel movement, but it would not take an extra 5 minutes. The MassHealth representative noted that time spent waiting for urination or bowel movement is not included in the hands on time for task PCA assistance. The MassHealth representative stated that there was nothing to support 5 more minutes for assistance with bowel care than with bladder care.

The appellant stated that the PCA assists with pulling down her pants and helps her to sit on the toilet. The appellant stated that she uses a walker and the PCA hold the walker while assisting the appellant onto the toilet. The appellant stated that she has not paid attention to how long the toileting task takes.

Medication planner: The appellant's provider requested 20 minutes a week for PCA assistance with pre-filling a medication box; MassHealth approved 5 minutes a week for PCA assistance with this task. (Exhibit 4, p. 19, testimony). The MassHealth representative stated that after reviewing the appellant's case for the hearing, she determined that 10 minutes was a more reasonable amount of time for PCA assistance with filling the appellant's weekly medication box. The MassHealth representative stated that the appellant has 7 daily medications and it should not take the PCA any more than 10 minutes to put the medications into the weekly medication box. The MassHealth representative noted that 3 minutes, twice a day was approved for PCA assistance with giving the appellant her medications. (Exhibit 4, p. 19).

The appellant stated that she is now taking another pain medication for a total of 8 medications a day. The appellant's surrogate stated that the PCA puts the medications in the medication box every week and helps her if the appellant's spouse is not there. The appellant stated that she has observed the PCA putting the medications into the medication box, but has not paid attention to how long it takes.

Findings of Fact

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

1. The appellant's provider, The Arc of the South Shore, submitted a re-evaluation request for prior authorization for 23.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on March 8, 2022.
2. By notice dated March 18, 2022, MassHealth approved 20.5 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service May 22, 2022 to May 21, 2023.
3. The appellant lives at home with her spouse; her diagnoses include lumbagosciatica and severe asthma.
4. MassHealth modified the time requested for PCA assistance with nail care, medication planner, and bowel care, and denied the time requested for PCA assistance with PROM.
5. The appellant's provider requested 5 minutes, once a day for PROM to the appellant's 4 extremities, for a total of 20 minutes a day, or 140 minutes per week.
6. The nurse evaluator from the appellant's provider agency wrote that passive range of motion is to prevent stiffness and maintain current level of function.
7. The appellant is ambulatory, has active functioning in her extremities, can independently move her limbs, and can participate in active range of motion exercises.
8. The appellant's provider requested 20 minutes a week for PCA assistance with nail care, and MassHealth approved 10 minutes a week for PCA assistance with nail care.
9. The appellant's provider requested 15 minutes, once a day, for PCA assistance with bowel care, and MassHealth approved 13 minutes, once a day, for PCA assistance with bowel care.
10. The appellant's provider requested 10 minutes, 6 times a day, for PCA assistance with bladder care.
11. For both bladder and bowel care, the nurse evaluator from the provider agency wrote that the PCA is to physically assist with toilet hygiene, clothing management, and changing absorbent

product.

12. The appellant's provider requested 20 minutes a week for PCA assistance with pre-filling a medication box; at the hearing, MassHealth approved 10 minutes a week for PCA assistance with pre-filling the appellant's medication box.
13. The appellant has 8 daily medications that need to be put into the weekly medication box.

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).

MassHealth modified the time requested for PCA assistance with nail care, bowel care, and pre-filling the medication box, and denied the time requested for PCA assistance with PROM.

The appellant's provider requested 5 minutes a day for PCA assistance with PROM for each of the appellant's 4 extremities and MassHealth denied the request. PROM is the movement of an individual's joints/extremities by a PCA when the individual cannot move his/her extremities on his/her own. The appellant is ambulatory and can independently move her extremities. Accordingly, MassHealth's denial of time requested for PCA assistance with PROM is upheld and the appeal is denied as to this issue.

The appellant's provider requested 20 minutes a week for PCA assistance with nail care, and MassHealth approved 10 minutes a week for PCA assistance with nail care. If the PCA is providing nail care once a week, then 10 minutes is sufficient time to keep the appellant's fingernails and toenails filed or clipped to a healthy length. Painting nails would be cosmetic and is not a covered PCA task. MassHealth's modification of time requested for PCA assistance with nail care is upheld and the appeal is denied as to this issue.

The appellant's provider requested 15 minutes, once a day, for PCA assistance with bowel care, and MassHealth approved 13 minutes, once a day, for PCA assistance with bowel care. The modification of two minutes time for task is based on the time requested for PCA assistance with bladder care. The appellant's provider requested 10 minutes time for task for PCA assistance with bladder care. For both bladder and bowel care, the nurse evaluator from the provider agency wrote that the PCA is to physically assist with toilet hygiene, clothing management, and changing absorbent product. The appellant testified that the PCA assists her with clothing management and

transferring onto the toilet from her walker. An additional three minutes for assistance with bowel care hygiene is reasonable. The time the PCA spends waiting while the appellant uses the toilet is not factored into hands on time for physical assistance. MassHealth's modification of time requested for PCA assistance with bowel care is upheld and the appeal is denied as to this issue.

The appellant's provider requested 20 minutes a week for PCA assistance with pre-filling a medication box, and MassHealth approved 10 minutes a week for PCA assistance with this task. The appellant has 8 medications that need to be placed into the weekly medication box. 10 minutes is a reasonable amount of time for the PCA to place 8 daily medications into a weekly medication box. No testimony or evidence was given to support more than 10 minutes would be needed for this task. MassHealth's modification of time requested for PCA assistance with prefilling the appellant's medication box is upheld and the appeal is denied as to this issue.

Order for MassHealth

None.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

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