

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2202554
Decision Date:	6/8/2022	Hearing Date:	May 17, 2022
Hearing Officer:	Brook Padgett		

Appellant Representative:



(brother-in-law)

MassHealth Representative:

M. Elliot, R.N.



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
MassHealth of Medical Assistance
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 422.410
Decision Date:	6/8/2022	Hearing Date:	May 17, 2022
MassHealth Rep.:	M. Elliot, R.N.	Appellant Rep.:	Brother-in-law
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a notice dated March 15, 2022, stating: “Your request for prior authorization for personal care attendant (PCA) services has been modified.” (Exhibit 1).

The appellant filed this appeal timely on April 04, 2022. (130 CMR 610.015(B); Exhibit 2).

Denial of prior authorization is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

Did MassHealth correctly reduce the appellant's prior authorization request for PCA assistance as the request did not meet the requirements set forth in the medical necessity regulation?

Summary of Evidence

The MassHealth representative testified a PCA evaluation was performed by a registered nurse with the appellant's provider agency on February 12, 2022. The provider indicated the appellant is [REDACTED] and has a diagnosis of Multiple Sclerosis (MS). MassHealth stated that the appellant's PCA time request was approved in full with the exception of time for assistance with wound care and e-stimulation.¹ The representative stated a request was made for 20 minutes, 2 times a day, 7 days a week, or 280 minutes per week for assistance with wound care as the appellant has a chronic ankle decubitus. The appellant also requested 20 minutes, 3 times a day, 7 days a week, or 420 minutes per week of assistance with her e-stimulation equipment. MassHealth denied the wound care in its entirety and approved 5 minutes, 3 times a day, 7 days a week for 105 minutes for e-stimulation. (Exhibit 4).

The appellant testified she has had a chronic ankle wound and requires approximately 15 minutes of assistance to undress, clean and redress her wound so that it can continue to properly heal and not get worse. The appellant maintains she requires the PCA to put on, reposition and take off her e-stimulator as well as time for the e-stimulator to work.

MassHealth responded that based on the appellant's testimony MassHealth would approve 15 minutes, 2 times a day, 7 days a week or 210 days a week for wound care. Regarding e-stimulation MassHealth would not approve more than 5 minutes, 3 times, 7 days a week or 105 minutes as PCA assistance is only for hands on activities such as positioning and repositioning the e-stimulator and not for time to wait while the e-stimulation was working.

The appellant's representative questioned the logic of having the PCA place the e-stimulator on the appellant but not paying them while they waited for the procedure to occur. The PCA is required to perform each operation and should be compensated. The appellant argued she has fallen recently and requires an individual in the home to help her in case she needs help. The appellant submitted a letter from her physician stating she requires the PCA hours to remain the same due to a decline in her health. The letter states the appellant "has had multiple falls and needs her PCA there for safety reasons." (Exhibit 5).

MassHealth explained the PCA program is consumer directed program and consists of hands on activities. MassHealth emphasized a PCA cannot be paid in case of an impending activity or to wait while the appellant completes an activity. In this instance the PCA should be performing other hands-on activities while the appellant is receiving her e-stimulation.

The appellant agreed to the MassHealth determination regarding wound care but requested a decision regarding the time required for e-stimulation.

¹ Electrical stimulation or e-stimulation is a type of physical therapy or treatment which applies an electrical current in an effort to strengthen muscles, block pain signals, and improve blood circulation.

Findings of Fact

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

1. The appellant has a primary diagnosis of Multiple Sclerosis. (Exhibit 4; and Testimony).
2. On February 12, 2022 a PCA evaluation was performed by a registered nurse with the appellant's provider agency. (Exhibit 4; and Testimony).
3. Time requested by appellant's provider agency for PCA assistance with activities was approved in full or agree to by the appellant except for time requested for assistance with use of an e-stimulator. (Testimony).
4. The appellant requested 20 minutes, 3 times a day, 7 days a week, or 420 minutes per week for assistance with assistance with use of an e-stimulator. (Testimony)
5. The appellant's hands-on time to assist with the appellant's e-stimulator is approximately 5 minutes, 3 times a day, 7 days a week or 105 minutes. (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).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately

cared for in the home (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADL'S) (130 CMR 422.410(A)).

130 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living. 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.

(B) Instrumental Activities of Daily Living. Instrumental activities of daily living include:

- (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 as being instrumental to the health care of the member.

(C) 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 will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

MassHealth approved or the appellant agreed to the PCA time requested for assistance with all activities except for time requested for assistance with her e-stimulator.

The appellant testified she requires the e-stimulator to be properly positioned on and then after 15 minutes of activity the e-stimulator must be removed. The PCA program requires that the PCA must provide physical hands-on assistance for the member. The PCA cannot be paid for waiting or in anticipation of an event occurring. Activities that do not require physical hands-on assistance such as waiting for an e-stimulator to complete its cycle or for laundry to wash or dry or in anticipation of a fall are not hands on activities. Under the PCA program the PCA cannot be paid during the period when they are waiting in anticipation of the completion of these activities.

Based on the record there is no evidence the appellant requires physical hands-on assistance of more than 5 minutes, 3 times a day, 7 days a week or 105 minutes to assist with an e-stimulator. The request for 20 minutes, 3 times a day, 7 days a week or 420 minutes to assist with e-stimulator is not eligible for payment under the PCA program and was properly denied by MassHealth. This appeal is DENIED.

Order for the MassHealth

None, other than to implement adjustments agreed to at the time of hearing.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth representative: PA Unit