

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2202948
Decision Date:	11/29/2022	Hearing Date:	09/29/2022
Hearing Officer:	Thomas Doyle		

Appearance for Appellant:




Appearance for MassHealth:

Mary Jo Elliot, R.N.



*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; Denied in part	Issue:	Prior Authorization, Personal Care Attendant Services
Decision Date:	11/29/2022	Hearing Date:	09/29/2022
MassHealth's Rep.:	Mary Jo Elliot R.N.	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 21, 2022, MassHealth modified the appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services from the requested 69 hours, 0 minutes of day/evening PCA assistance per week, to 62 hours, 30 minutes of day/evening PCA assistance per week (Ex.1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on May 13, 2022 (130 CMR 610.015; Ex. 2). Modification of a PA request is valid grounds for appeal to BOH (130 CMR 610.032). ¹

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant's prior authorization request for personal care attendant services.

¹ The PCM agency also requested, and MassHealth authorized, 2 nighttime hours of PCA services for the appellant, every night.

Summary of Evidence

The appellant was represented by her daughter, who appeared and testified at the hearing by telephone. MassHealth was represented by an R.N., who testified to the following: appellant is a female in her early ■■■ with a primary diagnosis of Dementia and diverticulitis. Currently, there is no aid pending. On or about March 9, 2022 the provider, Tr-Valley, Inc. submitted a re-evaluation request for 69 hours and 0 minutes per week for day/evening and 2 hours per night. On March 21, 2022, MassHealth modified the request to 62 hours and 30 minutes per week and agreed with the 2 hours per night.

There were multiple modifications. MassHealth modified mobility transfers from the requested amount of 15 minutes, 6 times a day, 7 days a week to 10 minutes, 6 times a day, 7 days a week because the appellant had the use of a Stand Hoyer lift. After testimony by the appellant's daughter, MassHealth agreed to the requested time. The appellant requested 2 minutes, 10 times a day, 7 days a week for mobility repositioning. MassHealth modified this request to 2 minutes, 6 times a day, 7 days a week. MassHealth agreed to the requested amount after hearing testimony from the appellant's daughter. Appellant requested 30 minutes, 3 times a day, 7 days a week for eating and an additional 15 minutes, once a day, 7 days a week. MassHealth modified this request to 30 minutes, 3 times a day, 7 days a week thereby eliminating the additional 15 minutes daily. The time for pre-filling a medicine pill box was modified from 20 minutes to 10 minutes.²

Findings of Fact

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

1. The appellant is a ■■■-year-old female MassHealth member who lives in the community and requires 24/7 care and supervision. (Testimony; Ex. 4, p. 8).
2. The appellant's medical diagnoses include Dementia, Diverticulitis, Arthritis of knees, hard of hearing, low blood counts and incontinent of bowel and bladder. (Testimony; Ex. 4, pp. 8 and 9).
3. The appellant is wheelchair dependent and does not stand or ambulate. (Testimony; Ex. 4, p. 8).
4. Tri-Valley Inc., a PCM agency, submitted a PA re-evaluation request to MassHealth on appellant's behalf on or about March 9, 2022 seeking 69 hours, 0 minutes of day/evening PCA assistance per week and 2 nighttime hours per night. (Testimony; Ex. 4, p. 3).
5. By notice dated March 21, 2022, MassHealth modified the requested time to 62 hours and 30 minutes per week and 2 nighttime hours every night for services from April 8, 2022 to April 7,

² The PCM agency also requested, and MassHealth authorized, 3 minutes twice a day for administration of medications.

2023. (Testimony; Ex. 1; Ex. 4, p. 3).

6. There is no aid pending. (Ex. 5).
7. MassHealth modified mobility transfers, repositioning, physical assist with eating and drinking, and pre-filling medicine box. (Testimony, Ex. 4).
8. MassHealth rescinded its modification on transfers and the parties agreed to 15 minutes, 6 times a day, 7 days a week. (Testimony).
9. After testimony, MassHealth rescinded its modification on repositioning and the parties agreed to 2 minutes, 10 times a day, 7 days a week. (Testimony).
10. Appellant's physical assist with eating and drinking was modified from 735 minutes to 630 minutes a week. (Testimony).
11. Appellant's pre-filling medicine was modified from 20 minutes to 10 minutes, 1 time a week. (Testimony).
12. MassHealth authorized the requested 3 minutes, 2 times a day, 7 days per week for the administration of medication. (Testimony).
13. Pre-filling a medicine pill box is allowed by a PCA in this instance, under the oversight of a surrogate. (Testimony).
14. The appellant's medication listed includes, *inter alia*, eye drops. (Testimony).

Analysis and Conclusions of Law

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

- (B) Medically necessary services must be of a quality that meets professionally recognized standards of 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 the MassHealth agency upon request. (42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

[**Bolded** emphasis added].

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

- (A) Activities of Daily Living (ADLs). Activities of daily living include the following:
- (1) mobility: physically assisting a member who has the 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.

[**Bolded** emphasis added].

MassHealth made modifications to the appellant's request for the following ADLs: assistance with eating and drinking and assistance with medications.

With respect to the modification of physically assisting with eating and drinking from 735 minutes to 630 minutes a week (thereby eliminating the additional request of 15 minutes, once a day, 7 days a week) it is unclear to ascertain what the breakdown is for the additional time that was requested. Indeed, both the MassHealth nurse and the appeal representative were unable to determine the breakdown for the requested additional time. (Testimony). At the hearing, the MassHealth nurse testified that generally, when feeding an elderly person, you give 15 or 20 minutes for each meal because you do not want to tire them out. Further, the MassHealth nurse stated that 30 minutes, 3 times a day, 7 days a week or 630 minutes a week is sufficient time to make sure someone is fed and receives adequate nutrition. (Testimony).

The appellant's representative testified that she wants the appellant to enjoy her food and believes the time that she requested is appropriate. However, it remains unclear as to the reasoning for the request of the additional 15 minutes per day, 7 days a week.

As to the modification of 20 minutes to 10 minutes to pre-fill a medicine box once a week, the reason for the modification was that pre-filling a medicine pill box is generally for the purposes of consumers to take their own medication. (Testimony). In this instance, pre-filling a medicine pill-box is allowed by a PCA under the oversight of a surrogate. (Testimony). Here, the appellant is unable to use a pre-fill and therefore it is unclear why a pre-fill was requested. In any event, most of the medications are administered daily, including nightly medication of eye drops which would not be included in a pill-box. Pre-filling medication into a pill-box is a repetitive action that includes filling each box once a week. The MassHealth nurse testified that generally a pre-fill is used for consumers to take their own pills and do not get mixed up with which day, or whether or not they took their medication.

The appellant's representative testified that she did not know what to say, she had put down what she thought was the appropriate amount of time. Upon further inquiry, the appellant's representative clarified her statement that she did not put down that time. The appellant's representative stated that she did not like the medication rushed. (Testimony).

MassHealth representative's testimony is persuasive and supported by documentary evidence. MassHealth's modifications are justified and the appellant, who has the burden, did not provide convincing evidence to support that it takes longer than 30 minutes, 3 times a day, 7 days a week for physical assistance with eating and drinking nor that it takes longer than 10 minutes to pre-fill a medicine pill box, when some of the medication listed would not be included in said box. Moreover, the administration of medications for 3 minutes twice a day was approved by MassHealth and therefore time that is not included solely in the pre-filling of a medicine pill box.

For these reasons, the parts of the appeal challenging the modifications for physically assisting with eating and drinking and pre-filling a medicine pill box are DENIED.

Due to the above-stated agreements between the parties, the parts of the appeal challenging MassHealth modifications to mobility transfers and repositioning are DISMISSED.

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.

Thomas Doyle

Hearing Officer
Board of Hearings

cc:

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

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