

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed; Denied	Appeal Number:	2203199
Decision Date:	6/14/2022	Hearing Date:	06/06/2022
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:	Dismissed; Denied	Issue:	Personal Care Attendant (PCA)
Decision Date:	6/14/2022	Hearing Date:	06/06/2022
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	██████████
Hearing Location:	Quincy Harbor South	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 14, 2022, MassHealth modified the appellant's request for prior authorization for 39.5 hours a week for day/evening PCA services and 14 hours a week for a nighttime attendant (NTA), and approved 28.5 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 April 26, 2022¹. (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

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.

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 by her sister, who she authorized to represent her at the hearing. 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 39.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on March 4, 2022. (Exhibit 4, p. 3). By notice dated March 14, 2022, MassHealth approved 28.5 hours per week in day/evening PCA services and 14 hours per week for NTA services. (Testimony, exhibits 1, 4, p. 3). The MassHealth representative stated that the appellant was previously approved for 34.5 hours per week in day/evening PCA services and 14 hours a week for NTA services.

The appellant lives at home with her adult daughter, who is also her PCA; her diagnoses include epilepsy, right spastic hemiplegia, non-functional right hand, shoulder, back and knee pain. (Exhibit 4, p. 9). The MassHealth representative testified that MassHealth modified the time requested for PCA assistance with mobility, other grooming, oral care, CPAP assistance, meal preparation, and laundry and denied the time requested for PCA assistance with passive range of motion (PROM).

After hearing testimony at the hearing, MassHealth approved 2 minutes, 8 times a day for PCA assistance with mobility, and 3 minutes twice a day for PCA assistance with CPAP machine, and the appellant's representative agreed with these adjustments and withdrew the appeal with regard to these issues. The appeal is dismissed with regard to the time approved for PCA assistance with mobility and CPAP assistance. The appellant's representative did not dispute MassHealth's approval of 3 minutes, once a day for PCA assistance with applying deodorant and lotion, 2 minutes, twice a day for PCA assistance with oral care, 65 minutes a day for PCA assistance with meal preparation, and 60 minutes a week for PCA assistance with laundry. The appellant's representative withdrew the appeal as to those issues. The appeal of the modification of time for PCA assistance with other grooming, oral care, meal preparation, and laundry is dismissed.

The issue remaining in dispute is the denial of time requested for PCA assistance with PROM.

PROM: The appellant's provider requested 10 minutes, once a day for PROM to the appellant's 4 extremities, for a total of 40 minutes a day, or 280 minutes per week. (Exhibit 4, p. 13). The nurse evaluator from the appellant's provider agency wrote that passive range of motion decreases

contractions [sic], promotes circulation, prevents DVTs, and decreases spasticity. (Exhibit 4, p. 13). The MassHealth representative stated that MassHealth denied the time requested for PCA assistance with PROM because the appellant is ambulatory, 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 immobilized individuals and is done to avoid contractures. The MassHealth representative testified that PROM does not increase circulation.

The MassHealth representative noted that the appellant has right hemiplegia and a non-functional right hand. The MassHealth representative stated that she would approve the requested 10 minutes a day for PCA assistance with PROM of the right upper extremity and the right lower extremity. The MassHealth representative pointed out that only the appellant's right side is impaired and her left upper and lower extremities are fully functioning.

The appellant's representative stated that she believes the appellant had 8 minutes, once a day for PCA assistance with both upper extremities and 7 minutes, once a day for PCA assistance with both lower extremities last year. The appellant's representative stated that she would like to have the same time as last year because the appellant has the same needs as last year. The appellant's representative noted that the appellant goes to physical therapy and has to do some of the exercises at home. The appellant's representative noted that the appellant can move her left limbs.

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 39.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on March 4, 2022.
2. By notice dated March 14, 2022, MassHealth approved 28.5 hours per week in day/evening PCA services and 14 hours per week for NTA services; the appellant was previously approved for 34.5 hours per week in day/evening PCA services and 14 hours a week for NTA services.
3. The appellant lives at home with her adult daughter, who is also her PCA; her diagnoses include epilepsy, right spastic hemiplegia, non-functional right hand, shoulder, back and knee pain.
4. MassHealth approved 2 minutes, 8 times a day for PCA assistance with mobility, and 3 minutes twice a day for PCA assistance with CPAP machine, and the appellant's representative agreed with these adjustments and withdrew the appeal with regard to these issues.
5. The appellant's representative did not dispute MassHealth's approval of 3 minutes, once a day

for PCA assistance with applying deodorant and lotion, 2 minutes, twice a day for PCA assistance with oral care, 65 minutes a day for PCA assistance with meal preparation, and 60 minutes a week for PCA assistance with laundry.

6. The appellant's provider requested 10 minutes, once a day for PCA assistance with PROM to the appellant's 4 extremities, for a total of 40 minutes a day, or 280 minutes per week, and MassHealth initially denied this request in full.
7. After hearing testimony at hearing, the MassHealth representative approved 10 minutes, once a week for PCA assistance with PROM to the appellant's right upper extremity and 10 minutes, once a day for PROM to the appellant's right lower extremity.
8. The appellant is ambulatory and has active functioning in her left extremities.
9. PROM is performed when a member is unable to move a body segment and the caregiver moves it for the member; PROM is a task performed for immobilized individuals and is done to avoid contractures.

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).

At the hearing, MassHealth approved 2 minutes, 8 times a day for PCA assistance with mobility, and 3 minutes twice a day for PCA assistance with CPAP machine, and the appellant's representative agreed with these adjustments. The appellant's representative did not dispute MassHealth's approval of 3 minutes, once a day for PCA assistance with applying deodorant and lotion, 2 minutes, twice a day for PCA assistance with oral care, 65 minutes a day for PCA assistance with meal preparation, and 60 minutes a week for PCA assistance with laundry. The appellant's representative withdrew the appeal with regard to these issues. Because these issues resolved at hearing, the appeal of the modification of time for PCA assistance with mobility, other grooming, oral care, CPAP assistance, meal preparation, and laundry is dismissed. (130 CMR 610.035(A)(2), (8)).

The appellant's provider requested 10 minutes a day for PCA assistance with PROM for each of the appellant's 4 extremities. MassHealth approved 10 minutes a day for PCA assistance with PROM

to the appellant's right upper and right lower extremities. 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 has right spastic hemiplegia, and non-functional right hand and thus MassHealth determined that PROM is medically necessary for the appellant's right limbs. The appellant is ambulatory and can independently move her left extremities and thus PROM is not medically necessary for the appellant's left limbs. MassHealth's approval of time for PCA assistance with PROM to the appellant's right extremities and denial of time requested for PCA assistance with PROM to the appellant's left extremities is upheld and the appeal is denied as to this issue.

Order for MassHealth

Adjust the time for PCA assistance with mobility, assistance with CPAP machine, and PROM to the right extremities, as agreed to at the 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.

Patricia Mullen
Hearing Officer
Board of Hearings

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