

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed-in-part	Appeal Number:	2203678
Decision Date:	8/9/2022	Hearing Date:	06/16/2022
Hearing Officer:	Casey Groff		

Appearance for Appellant:

, PCA/friend

Appearance for MassHealth:

Mary Jo Elliot, R.N., Clinical Reviewer,
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:	Approved-in-part; Dismissed-in-part	Issue:	Personal Care Attendant Services
Decision Date:	8/9/2022	Hearing Date:	06/16/2022
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Rep.:	PCA/friend
Hearing Location:	Board of Hearings (Remote)	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 May 11, 2022, MassHealth informed Appellant that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant filed a timely appeal on behalf of Appellant on May 13, 2022. See 130 CMR 610.015(B); Exhibit 2. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his PCA. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a MassHealth member over the age of 60. See Exh. 4, pp. 3. 11. His diagnoses include insulin-dependent diabetes mellitus, diabetic neuropathy, osteoarthritis, coronary artery disease, history of myocardial infarction in 2021, cardiac arrhythmia, hypertension, hyperlipidemia, gastroesophageal reflux disease, and cirrhosis of the liver. Id. at 11-12. In June of 2021, he was in the hospital for three months for osteomyelitis requiring surgical debridement and IV antibiotic therapy. Id. at 12. He was admitted to rehabilitation for an additional two months and is currently living in the community where he receives outpatient physical therapy. Id.

On April 29, 2022, Stavros Center for Independent Living (Stavros), a personal care management (PCM) agency, performed an initial evaluation of Appellant to determine his need for personal care attendant (PCA) services. Id. at 10. Based on the evaluation, Stavros submitted a prior authorization (PA) request to MassHealth, on Appellant's behalf, seeking 15 hours and 30 minutes of day/evening PCA services per week for dates of service beginning May 11, 2022 through May 10, 2023. See Exh. 1. No nighttime PCA hours were requested. Id.

Through a letter dated May 11, 2022, MassHealth notified Appellant that it modified his PA request by approving a total of 12 hours and 30 minutes per week. Id. MassHealth modified the time/frequency that was requested for the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): (1) grooming, (2) bladder care, and (3) medical transportation.

At hearing, the parties first addressed MassHealth's modification to the time requested for grooming. The only grooming task that Appellant sought assistance for was diabetic foot care and lotion application. See Exh. 4, p. 17. The time requested for foot care and lotion application was 3 minutes per day, seven days per week (3x1x7). Id. The PCM agency noted that Appellant is unable to perform this task independently due to pain, impaired range of motion, instability, neuropathy, and impaired activity tolerance. Id. MassHealth did not allow any time for grooming. See Exh. 1. The MassHealth representative testified that such assistance would be included under the time approved for bathing. In the ADL of bathing, MassHealth approved 20 minutes daily as requested. See Exh. 4, p. 16. The MassHealth representative explained this should be sufficient time to clean and dry his feet, which is the standard of care for a diabetic person.

Appellant's PCA testified that this task is performed separate from bathing and it takes time. He cannot do this himself. After his osteomyelitis, she needs to be careful as he experiences a lot of pain in the foot area. The time for bathing does not account for this – the 20 minutes that was approved for bathing is insufficient and does not include time for lotion application.

Next the parties addressed the modification made to bladder care. Here, the PCM agency requested 10 minutes, two times per day, seven days per week (10x2x7) for physical assistance with the use of the urinal. See Exh. 4, p. 20. MassHealth modified the time requested to five minutes, two times per day, seven days per week (5x2x7). See Exh. 1. After the parties

addressed the reasoning for MassHealth's decision, including the fact that MassHealth approved time for housekeeping and equipment maintenance, the Appellant's representative accepted the modification as made by MassHealth.

Finally, the parties addressed the modification made to medical transportation. For this IADL, Appellant requested a total of 132 minutes per week (132x1). Id. at 29. The requested time was calculated by totaling the frequency of yearly medical appointments, as follows: 4 PCP visits, 4 cardiology visits, 1 urology visit, 4 orthopedic visits, and 104 physical therapy visits per year (or 2 per week). Id. at 33. In addition to the travel time for each visit, the PCM agency noted that each visit requires additional transfer time for the PCA to physically assist with transfers in-and-out of the home, up-and-down the access ramp, on/off vehicle, and in-and-out of the medical office. Id. at 29. The PCM agency noted Appellant is not independent in these tasks due to pain, impaired range of motion, instability, neuropathy, and impaired activity tolerance. Id.

MassHealth modified the request by approving all the physician visits as requested, but reduced the physical therapy visits from 104 per year to 20 visits per year. See Exh. 1. This resulted in a total approved medical transportation time of 39 minutes per week (39x1). The MassHealth representative testified that MassHealth did not take issue with the travel and transfer time per visit, however reduced the total PT visits allowed because regulations permit 20 physical therapy visits per year before a member needs prior authorization for additional visits.

Appellant's PCA testified that Appellant has been going to physical therapy twice per week since he was released from rehabilitation about five or six months ago. She testified that she drives him there, transfers him, and picks him up from the appointments. The frequency of the physical therapy was recommended by the orthopedist. He has had over 20 visits this year and MassHealth continues to cover the services.

Findings of Fact

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

1. Appellant is a MassHealth member over the age of 60 with diagnoses including insulin-dependent diabetes mellitus, diabetic neuropathy, osteoarthritis, coronary artery disease, history of myocardial infarction in 2021, cardiac arrhythmia, hypertension, hyperlipidemia, gastroesophageal reflux disease, and cirrhosis of the liver.
2. In June of 2021, he was in the hospital for three months for osteomyelitis requiring surgical debridement and IV antibiotic therapy. Afterwards, he was admitted to rehabilitation for an additional two months and is currently living in the community where he receives outpatient physical therapy.
3. On April 29, 2022, Stavros performed an initial evaluation of Appellant to determine his need for PCA services.

4. Based on the evaluation, Stavros submitted a PA request to MassHealth, on Appellant's behalf, seeking 15 hours and 30 minutes of day/evening PCA services per week for dates of service beginning May 11, 2022 through May 10, 2023.
5. Through a letter dated May 11, 2022, MassHealth notified Appellant that it modified his PA request by approving a total of 12 hours and 30 minutes per week of PCA services.
6. MassHealth modified the time/frequency that was requested for (1) grooming, (2) bladder care, and (3) medical transportation.
7. For grooming, Appellant sought assistance for diabetic foot care and lotion application at 3 minutes per day, seven days per week (3x1x7).
8. Appellant is unable to perform diabetic foot care and lotion application independently due to pain, impaired range of motion, instability, neuropathy, and impaired activity tolerance.
9. MassHealth did not allow any time for grooming based on the determination that the 20 minutes approved for bathing is sufficient time for the PCA to clean and dry his feet.
10. Appellant's PCA applies lotion and must be careful with his feet due to pain and sensitivity from his osteomyelitis.
11. For bladder care, the PCM agency requested 10x2x7 for physical assistance with the use of the urinal.
12. MassHealth modified the time requested for bladder care to 5x2x7.
13. At hearing, Appellant's representative did not dispute the modification to bladder care.
14. Under the IADL of medical transportation, Appellant requested a total of 132 minutes per week (132x1) to accommodate travel and transfer time for the following yearly medical appointments: 4 PCP visits, 4 cardiology visits, 1 urology visit, 4 orthopedic visits, and 104 physical therapy visits per year (or 2 per week).
15. The medical appointment transfer time allows the PCA to physically assist Appellant in-and-out of the home, up-and-down the access ramp, on/off vehicle, and in-and-out of the medical office.
16. Appellant is not independent in transferring to medical appointments due to pain, impaired range of motion, instability, neuropathy, and impaired activity tolerance.
17. MassHealth modified the request by approving all the physician visits as requested but reduced the physical therapy visits from 104 per year to 20 visits per year, resulting in a total approved medical transportation time of 39 minutes per week (39x1).

18. Appellant has been going to physical therapy twice per week since he was released from rehabilitation about five or six months ago, and this was ordered by his orthopedist.

19. Appellant's PCA drives him to, and from, the physical therapy appointments.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:¹ First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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.

See 130 CMR 450.204(A).

Medically necessary services must also "be of a quality that meets professionally recognized standards of health care and must be substantiated by the record including evidence of such medical necessity and quality." 130 CMR 450.204(B).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive assistance with his activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs) to meet his health care needs. MassHealth

¹ PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

regulations provide the following description of ADLs under the PCA program:

(A) Activities of Daily Living (ADLs). 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 bathing, personal hygiene, or grooming;
- (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.

See 130 CMR 422.410.

In addition, MassHealth reimburses for PCA assistance with certain IADLs, which include tasks that are “instrumental to the care of the member’s health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services.” 130 CMR 422.402. Specifically, MassHealth pays for transportation for the purposes of “accompanying the member to medical providers.” See 130 CMR 422.410(B)(3). In determining the amount of time it takes the PCA to physically assist a member with an IADL, MassHealth requires the PCM agency to consider the presence of live-in family member’s responsible for tasks they would perform themselves and would include the member, such as laundry, meal preparation, and shopping. See 130 CMR 422.410(C). MassHealth will also consider individual circumstances when determining the amount of physical assistance a member requires for IADLs. Id.

With respect to both ADLs and IADLs, MassHealth will cover the “activity time performed by a PCA in providing assistance with the [tasks].” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Grooming

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that three minutes per day (3x1x7) for grooming/foot care and lotion application was appropriate and consistent with the regulatory standards above. The evidence indicates that Appellant is unable to perform this task independently due to pain, impaired range of motion, instability, neuropathy, and impaired activity tolerance. MassHealth did not approve any time for this grooming task based on the rationale that washing and drying the feet would be included in the 20 minutes approved for bathing. However, Appellant's PCA persuasively testified that it takes longer than 20 minutes to bathe Appellant and this time would not be sufficient to encompass applying lotion and foot care. She stated that this process is done slowly due to the pain and sensitivity in the foot area following his osteomyelitis. Based on this evidence, the request for grooming at 3x1x7 is appropriate. The appeal is APPROVED-in-part with respect to grooming.

Medical Transportation

Appellant successfully demonstrated that he requires 132 minutes per week for assistance with medical transportation, which includes assistance to attend his two physical therapy visits per week. For this IADL, MassHealth did not take issue with the transfer time and travel times requested for each medical appointment. Rather, MassHealth approved PCA assistance to take Appellant to only 20 physical therapy visits per-year, as opposed to the 104 visits per-year as requested. The fact that MassHealth regulations require prior authorization to cover more than 20 therapy visits per year, is not, in itself, a sufficient basis to limit PCA assistance to attend appointments if they are indeed prescribed and medically necessary. There is no evidence in the record that Appellant has not sought, or has been denied, prior authorization for such services. In fact, the Appellant's PCA testified that the frequency of therapy visits was ordered by his orthopedist and that she has been taking Appellant to these appointments twice per-week for the last five or six months since he was discharged from rehabilitation. She further testified that MassHealth has continued to cover the physical therapy services. Based on this evidence, the total requested time of 132 minutes per week for medical transportation is appropriate. The appeal is APPROVED-in-part with respect to medical transportation.

Bladder Care

The appeal is DISMISSED-in-part with respect to bladder care as Appellant did not dispute MassHealth's modification to 5x2x7.

Order for MassHealth

For the PA period beginning May 11, 2022 through May 10, 2023, approve the requested time for grooming (3x1x7) and medical transportation (132x1). The modification to bladder care remains at 5x2x7.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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

Appellant Representative:

