

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed-in-part; Approved-in-part	Appeal Number:	2203825
Decision Date:	7/6/2022	Hearing Date:	06/28/2022
Hearing Officer:	Casey Groff		

Appearance for Appellant:

Pro se; [Redacted], Functional Skills
Trainer

Appearance for MassHealth:

Donna Burns, R.N., 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-in-part; Approved-in-part	Issue:	Personal Care Attendant Services
Decision Date:	7/6/2022	Hearing Date:	06/28/2022
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	<i>Pro Se</i>
Hearing Location:	Board of Hearings (Remote)	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 April 29, 2022, MassHealth informed Appellant that it was modifying her request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant filed this appeal in a timely manner on May 18, 2022. See 130 CMR 610.015(B); Exhibit 2. Modification of a 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 the hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by herself and her functional skills trainer. Both parties appeared via telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is over the age of 60 and has diagnoses including but not limited to: Lyme disease, Guillain-Barre syndrome, chronic inflammatory demyelinating polyneuropathy (CIPD), and type II diabetes, and a history of a left toe amputation. See Exh. 4, p. 8-9. She has weakness in her legs and experiences tremors in her upper and lower extremities. Id. Appellant uses a wheelchair and rollator-walker to ambulate. Id.

On February 11, 2022 Appellant's personal care management (PCM) agency conducted a re-evaluation of Appellant to determine her continued need for personal care attendant (PCA) hours. See Exh. 4, p. 7. On April 25, 2022, the PCM agency sent MassHealth a prior authorization (PA) request on behalf of Appellant, seeking 23 hours and 15 minutes of PCA services per week for dates of service May 27, 2022 through May 26, 2023. See Exh. 1; Exh. 4, p. 3.

On April 29, 2022, MassHealth notified Appellant that it was modifying her PA request by approving 22 hours and 0 minutes of PCA services per week. MassHealth approved the time requested for all areas of care, except for the following two instrumental activities of daily living (IADLs): (1) housekeeping and (2) equipment maintenance. See Exh. 1.

At hearing, the parties first addressed the modification to "housekeeping." In her PA request, Appellant requested 90 minutes per week for assistance with this task. See Exh. 4, p. 24. The PCM agency noted that Appellant requires total dependance with this task due to her unsteady gait and hand tremors. Id. MassHealth modified the time for housekeeping to 60 minutes per-week. See Exh. 1. After hearing testimony concerning Appellant's needs, MassHealth agreed to approve the 90 minutes as requested, thereby resolving the issue of "housekeeping."

Next, the parties addressed the modification to "equipment maintenance." In the PA request, Appellant requested 70 minutes of PCA assistance per week for maintenance of Appellant's wheelchair and "other" equipment. See Exh. 4, p. 25. The PCM agency identified Appellant as requiring "total dependance" with this task. Id. MassHealth modified the time requested to 30 minutes per-week. See Exh. 1. The MassHealth representative explained that the PCM agency did not specify what "other" equipment required maintenance and therefore approved what is considered "standard of care" for wheelchair maintenance – which is generally 30-35 minutes per week. The MassHealth representative offered approve an additional five minutes per-week for a total of 35 minutes per-week.

In response, Appellant and her skills trainer testified that 30 or 35 minutes would be insufficient. In the last PA period she requested, and MassHealth approved, the full 70 minutes. Appellant's

needs have increased as her condition progresses, and she becomes weaker. Appellant has five pieces of equipment that require daily maintenance and cleaning, which include her wheelchair, shower chair, over-the-toilet commode, bedside commode, and rollator-walker. The PCM agency requested 70 minutes per week, which affords the PCA approximately two minutes per day to wash, rinse, and wipe each of the five pieces of equipment ((2x5) x7 days = 70).

According to the PA request, Appellant did not request time for toileting and was listed as being independent in this ADL. See Exh. 4.

Appellant explained that she lives by herself and relies totally on the PCA for all her care. When the PCA is not present, Appellant will use her rollator to walk to the kitchen to get snacks or meals that her PCA has already prepared and pre-packaged, which she then brings back via her rollator, to the living room to eat. Due to her increased tremors and unsteady gait, food, such as yogurt, and drinks spill onto the rollator causing it to get dirty quickly. This results in the need to frequently clean the rollator to minimize germs.

The MassHealth representative explained that cleaning the equipment would be included in the 90 minutes approved for “housekeeping.” Additionally, the time approved for “meal preparation” would encompass time for cleaning up after meals.

In response, Appellant and her skills trainer testified that the meal preparation process is entirely separate from cleaning the rollator. Specifically, the PCA uses the full meal preparation time to put together and pre-package each meal, similar to “meals on wheels,” so that Appellant can get her meals as needed during non-PCA hours, e.g. when the PCA is not present. This time is also used to clean-up after preparing the meals. Due to the PCAs limited hours, the task of cleaning the rollator is not done directly after Appellant eats each meal. It is an entirely separate process than meal preparation.

Findings of Fact

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

1. Appellant is over the age of 60 and has diagnoses including but not limited to: Lyme disease, Guillain-Barre syndrome, CIPD, type II diabetes, and a prior history of a left toe amputation.
2. Appellant experiences weakness in her legs and has tremors in her upper and lower extremities.
3. Appellant uses a wheelchair and a rollator/walker to ambulate.
4. On April 25, 2022, Appellant’s PCM agency sent MassHealth a PA request on behalf of Appellant, seeking 23 hours and 15 minutes of PCA services per week for dates of service May 27, 2022 through May 26, 2023.

5. On April 29, 2022, MassHealth notified Appellant that it was modifying her PA request by approving 22 hours and 0 minutes of PCA services per week.
6. In its decision, MassHealth modified the time requested for the following two IADLs: (1) housekeeping and (2) equipment maintenance.
7. At hearing, MassHealth reversed its modification to housekeeping and approved 90 minutes as requested.
8. In the PA request, Appellant sought approval for 70 minutes per-week (10 minutes per-day) for PCA assistance with maintaining her wheelchair and “other” medical equipment.
9. MassHealth modified the time for equipment maintenance to 30 minutes per-week.
10. Appellant lives alone and is totally dependent on her PCA for assistance with equipment maintenance, housekeeping, laundry, and meal preparation.
11. Appellants needs have increased as her condition progresses, and she becomes weaker.
12. Appellant has five pieces of equipment that require daily maintenance, which include her wheelchair, shower chair, over-the-toilet commode, bedside commode, and rollator walker.
13. Appellant did not request, and did not receive, time for toileting assistance.
14. Appellant’s rollator/walker requires frequent cleaning and wiping because she uses it to transport herself and pre-packaged meals and drinks from the kitchen to the living room, causing the rollator to get dirty due to spills.
15. Appellant’s PCA uses the entirety of the approved “meal preparation” time for putting together and pre-packaging meals for Appellant, with related clean-up; and this does not account for cleaning spills on the rollator, which often occur when the PCA is not present.

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. Rather, the issue on appeal concerns MassHealth’s modification to the time Appellant requested for PCA assistance, specifically with respect to the IADLs of “housekeeping” and “equipment maintenance.”

Instrumental activities of daily living (IADLs) are 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. Equipment maintenance involves “assisting members with special needs, including the care and maintenance of wheelchairs and adaptive devices.” See 130 CMR 422.410(B)(4)(a).

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.

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. Finally, MassHealth covers the "activity time performed by a PCA in providing assistance with the [ADLs or IADLs]." 130 CMR 422.411.

At hearing, MassHealth agreed to approve 90 minutes for housekeeping, as Appellant requested, thereby resolving this part of the appeal. The only remaining issue in dispute concerns MassHealth's modification to the time requested for "equipment maintenance."

According to the evidence in the hearing record, Appellant is over the age of 60 and lives alone. Due to her condition, Appellant is entirely unable to participate or assist in many IADL's, including "equipment maintenance," leaving her totally dependent on PCA staff to complete this task. As indicated in the PA request, Appellant requested 70 minutes per week – amounting to 10 minutes per-day - for assistance with maintaining her wheelchair and "other" medical equipment. See Exh. 4, p. 25. At hearing, Appellant clarified that she owns a total of five pieces of medical equipment consisting of her wheelchair, two toileting commodes (bedside and over-the-toilet), a shower chair, and a rollator that she uses to access her prepared packaged meals when the PCA is not present. Appellant and her skills trainer persuasively testified that the request for 10 minutes per-day is medically necessary, as it gives the PCA two-minutes per-day to maintain each piece of equipment. This testimony is supported by the fact Appellant uses each piece of equipment daily. Although MassHealth approved time for housekeeping and meal preparation, there is nothing in the documentation to suggest this time encompassed assisting Appellant in maintaining these adaptive devices to accommodate her "special needs". See 130 CMR 422.410(B)(4)(a). Similarly, Appellant did not request, nor receive, any time for toileting. Although her commodes allow her to toilet independently, they nevertheless require maintenance, and which may be considered "adaptive devices" that are beyond the scope of standard housekeeping tasks. Id. For these reasons, Appellant met her burden in proving that 30 minutes – as MassHealth approved - is insufficient for a PCA to tend to each piece of medical equipment. The evidence shows that Appellant's request for 70 minutes per-week (10 minutes per day) is medically necessary for her PCA to adequately assist in providing equipment maintenance.

The appeal is APPROVED with respect to this issue of "equipment maintenance."

The appeal is DISMISSED with respect to "housekeeping" as MassHealth agreed to restore the time as requested.

Order for MassHealth

For the PA period beginning May 27, 2022 through May 26, 2023, approve the time requested for equipment maintenance (70x1) and housekeeping (90x1).²

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

² These changes are to be made retroactive to the beginning of the PA period.