

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2204024
Decision Date:	8/15/2022	Hearing Date:	06/28/2022
Hearing Officer:	Scott Bernard		


Appearance for Appellant:
[Redacted] (the appellant) *via* telephone
[Redacted] (wife) *via* telephone

Appearance for MassHealth:
Donna Burns, RN *via* telephone



*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 (PA) Personal Care Assistance (PCA) Services
Decision Date:	8/15/2022	Hearing Date:	06/28/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 modified the appellant's prior authorization (PA) request for MassHealth PCA services. (See 130 CMR 450.204; 422.000 *et seq* and Exhibit (Ex.) 1; Ex. 5, pp. 3, 4-6). The appellant filed this appeal in a timely manner on May 23, 2022. (See 130 CMR 610.015(B) and Ex. 2). Modification to a request for PCA services is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204 and 422.000 *et seq*, in determining that the PA request for PCA services should be modified.

Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. She stated that the appellant is an individual under the age of 65 with a history of spinal

cord injury, tetraplegia above level C4. (Ex. 5, p. 9). The appellant has an American Spinal Injury Association (ASIA) Impairment Scale Grade C injury.¹ (*Id.*). On May 6, 2022, the Personal Care Management Agency (PCM) submitted a PA reevaluation request for PCA services on the appellant's behalf. (Ex. 5, pp. 7-34). The PCM requested 85 hours of day and evening PCA services per week and two hours of PCA services per night for one year. (Ex. 1; Ex. 5, pp. 3, 6). In the notice dated May 11, 2022, MassHealth modified this request and approved 72 hours and 45 minutes of day and evening PCA services per week and two hours of PCA services per night from July 22, 2022 through July 21, 2023. (*Id.*). MassHealth specifically modified the time requested for three activities of daily living (ADLs) (mobility, quick wash, and night bladder care) and three instrumental ADLs (IADLs) (meal preparation, PCA paperwork, and medical transport). (*Id.*).

During the course of the hearing, the appellant accepted the modifications MassHealth to mobility and night bladder care. The MassHealth representative adjusted the modification to meal preparation, which was increased to 65 minutes per day and the appellant accepted this adjustment. The MassHealth representative also adjusted the modification to medical transportation which the appellant accepted.² Based on that adjustment, the MassHealth representative calculated that the time for medical transportation had increased to 103 minutes per week.³ (Ex. 6). Finally, based on the appellant's testimony, the MassHealth representative restored the time for Quick Wash to 20 minutes per day, seven days per week, which was what was requested. (Ex. 5, p. 13).

The PCM requested 30 minutes per week for assistance completing PCA paperwork because the appellant cannot use his dominant hand to write because of his medical condition. (Ex. 5, p. 26). MassHealth modified this time to 15 minutes per week. (Ex. 1; Ex. 5, pp. 3, 4-6). The MassHealth representative testified that the time requested was longer than ordinarily required. The MassHealth representative also stated that the time MassHealth did approve for this activity was the same as what the appellant received in the previous year. The appellant's wife testified that 15 minutes was not enough time for this activity. The appellant's wife testified that the day/evening PCA spends five minutes per day completing a daily entry into a logbook to relay information concerning the appellant's condition to the night PCA. The MassHealth representative testified that assistance with PCA paperwork usually concerns completion of things like time sheets and the like.

¹ According to the ASIA website, Grade C means "Motor function is preserved at the most caudal sacral segments for voluntary anal contraction (VAC) OR the patient meets the criteria for sensory incomplete status (sensory function preserved at the most caudal sacral segments S4-5 by LT, PP or DAP), and has some sparing of motor function more than three levels below the ipsilateral motor level on either side of the body. (This includes key or non-key muscle functions to determine motor incomplete status.) For AIS C – less than half of key muscle functions below the single NLI have a muscle grade ≥ 3 ." (*see* https://asia-spinalinjury.org/wp-content/uploads/2019/10/ASIA-ISCOS-Worksheet_10.2019_PRINT-Page-1-2.pdf).

² The modifications specifically concerned the number of medical visits, as well as the time allotted for transfers into and out of the appellant's home and medical appointments. MassHealth did not modify the PCM agency's calculation of the travel time to and from the appointments themselves. Therefore, the adjustment to this modification involved increasing the number of visits per year, as well as changing the transfer times, which is what the appellant actually accepted.

³ The MassHealth representative stated in the hearing that she needed time to recalculate how the adjustment affected the time for medical transportation. The appellant did not object to this. The calculation was then relayed to the hearing officer *via* email later the day of the hearing. (Ex. 6).

Findings of Fact

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

1. The appellant is an individual under the age of 65 with a history of spinal cord injury. (Ex. 5, p. 9).
2. On May 6, 2022, the PCM submitted a PA reevaluation request for PCA services on the appellant's behalf. (Ex. 5, pp. 7-34).
3. The PCM requested 85 hours of day and evening PCA services per week and two hours of PCA services per night for one year. (Ex. 1; Ex. 5, pp. 3, 6).
4. In a notice dated May 11, 2022, MassHealth modified this request and approved 72 hours and 45 minutes of day and evening PCA services per week and two hours of PCA services per night from July 22, 2022 through July 21, 2023. (Ex. 1; Ex. 5, pp. 3, 6).
5. MassHealth specifically modified the time requested for three ADLs (mobility, quick wash, and night bladder care) and three IADLs (meal preparation, PCA paperwork, and medical transport). (Ex. 1; Ex. 5, pp. 3, 6).
6. During the hearing, the MassHealth representative overturned the modification concerning quick wash and restored the requested time of 20 minutes per day, seven days per week. (Ex. 5, p. 13; Testimony of the MassHealth representative).
7. The appellant accepted adjustments increasing the times for meal preparation and medical preparation. (Testimony of the MassHealth representative; Testimony of the appellant; Ex. 6).
8. The appellant accepted the modifications MassHealth made to the times for mobility and night bladder care. (Testimony of the appellant).
9. The PCM requested 30 minutes per week for assistance completing PCA paperwork because the appellant cannot use his dominant hand to write because of his medical condition. (Ex. 5, p. 26).
10. MassHealth modified this time to 15 minutes per week because it was longer than ordinarily required and was the same as the previous year. (Ex. 1; Ex. 5, pp. 3, 4-6; Testimony of the MassHealth representative).

Analysis and Conclusions of Law

The provider must request prior authorization reevaluation from the MassHealth agency as a prerequisite to continued payment for ongoing PCA services. (130 CMR 422.416). Reevaluations must be conducted at least annually, accurately represent the member's need for physical assistance with ADLs and IADLs and consider the member's physical and cognitive conditions and resulting functional limitations to determine ability to benefit from PCA services. (130 CMR 422.422(D)). MassHealth covers activity time performed by a PCA in aiding with the ADLs and IADLs specified in the reevaluation, and as authorized by MassHealth. (130 CMR 422.411(A)). ADLs include physical assistance with mobility, taking medications, bathing or grooming, passive range of motion exercises, eating, toileting, and dressing and undressing. (130 CMR 422.402; 130 CMR 422.410(A)).

Prior authorization determines the medical necessity of the authorized services. (130 CMR 422.416; 130 CMR 450.303). A service is medically necessary if 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 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. (130 CMR 450.204(A)). 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. (130 CMR 450.204(B)).

This appeal initially concerned modifications to three ADLs and three IADLs. During the hearing, MassHealth overturned its modification of the time for quick wash and restored the time to what was requested. MassHealth adjusted the times for meal preparation and medical transportation, which the appellant accepted. The appellant also decided that he did not oppose the modifications to mobility and night bladder care. MassHealth may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*). The MassHealth Board of Hearings will also dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). Since the parties reached an agreement in favor of the appellant concerning quick wash, meal preparation, and medical transportation; and the appellant did not contest the modifications to mobility and night bladder care, concerning these five ADLs/IADLs the appeal is DISMISSED.

For that reason, the only issue that remains concerns the modification to the time requested for assistance with PCA paperwork. There was some question during the hearing concerning what encompasses "PCA paperwork." The regulations state that this is assistance with "completing the paperwork **required for receiving** PCA services" (emphasis added). (130 CMR 422.410(B)(4)(b)). 130 CMR 422.420(A) lists 23 conditions a member must perform in order to continue receiving PCA services. These include the following five conditions relevant here:

...As a condition of receiving MassHealth PCA services, the member must

- (1) complete and sign the standard consumer agreement supplied by the fiscal intermediary;
- (2) complete and sign all employment forms required by the fiscal intermediary; and
- (3) complete and sign activity forms and submit them to the fiscal intermediary in the form and format as required by the MassHealth agency, including through the use of EVV, and in accordance with the instructions provided and time frame specified by the fiscal intermediary or the MassHealth agency;
- (4) ensure that information submitted on the activity forms for each pay period correctly identifies who provided the PCA services, and the correct hours and dates that the PCA services were provided;
- ...
- (18) review and sign the evaluation or reevaluation prepared by the PCM... (130 CMR 422.420(A)).

Assisting with PCA paperwork encompasses activity for which the member is responsible. It does not encompass activity, such as completing daily reports concerning the member's health condition, that the appellant is not required to complete to continue receiving PCA services. The appellant did not present any further evidence showing that MassHealth incorrectly determined the time for this activity. As a matter of fact, MassHealth modified this activity to reflect the time he received last year. The appellant did not indicate that he needed more assistance with paperwork than he had last year.

For the above stated reason, with regard to assistance with PCA paperwork, the appeal is DENIED.

Order for MassHealth

If it has not already done so, MassHealth will issue a new notice stating the newly determined hours for quick wash, meal preparation, and medical transportation. All changes should be effective from the beginning of the PA period.

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.

Implementation of this Decision

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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