

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in Part, Dismissed in Part	Appeal Number:	2204490
Decision Date:	8/31/2022	Hearing Date:	07/19/2022
Hearing Officer:	Alexis Demirjian		

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, RN



*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:	Denied in Part, Dismissed in Part	Issue:	Modification of PCA Services
Decision Date:	8/31/2022	Hearing Date:	07/19/2022
MassHealth's Rep.:	Mary Jo Elliot, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor 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 9, 2022, MassHealth modified the appellant's PCA services. (see 130 CMR 450.303 and Exhibit 1). The appellant filed this appeal in a timely manner on June 9, 2022 (see 130 CMR 610.015(B) and Exhibit 2). ¹ Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization request for PCA services.

Issue

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.

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 (A)(2) and 130 CMR 450 (A) (1), in modifying the appellant's PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. She testified that the documentation showed that the appellant is a MassHealth member over the age of 65 with a primary diagnosis of Alzheimer's, age-related debility, and arthritis.

The appellant was represented at hearing via telephone by her son. The MassHealth representative testified that the appellant's personal care management (PCM) agency, Elder Care Services of Merrimack Valley, submitted a prior authorization request for PCA services on May 5, 2022, requesting 55 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per night, 7 nights per week for dates of service of May 29, 2022 through May 28, 2023. MassHealth modified the request to 51 hours and 15 minutes a week of day/evening hours per week and approved the 2 nighttime hours per night. At hearing, the parties were able to resolve the disputes related to PCA assistance with the following activities of daily living (ADLs): PM wash, grooming (other) and medication assistance. PCA assistance with the ADLs of mobility, transfers, and bathing, remain at issue.

Mobility

The appellant requested 8 minutes, 7 time per day, 7 days per week for mobility. MassHealth modified the request to 7 minutes, 7 time per day, 7 days per week because the time requested was longer than ordinarily required. The MassHealth representative testified that the appellant was approved for 7 minutes, 7 time per day, 7 days per week for mobility. She explained that MassHealth considers mobility the sole act of ambulating between rooms. This time does not include the time spent assisting the appellant from sitting to standing, which is included in transfers. Nor does the mobility time include PCA waiting time, or time spent coaching the appellant to ambulate. PCA services do not include coaching or supervisory time.

The appellant's representatives testified that due to the appellant's cognition issues she requires prompting several times before she will begin ambulating, thus it takes longer than seven minutes to complete the mobility task.

Transfers

The appellant requested 5 minutes, 6 times day, 7 days a week for transfers. MassHealth modified the request to 3 minutes, 6 times day, 7 days a week because the time requested was longer than ordinarily required. The MassHealth representative testified that the appellant was approved for 3 minutes, 6 times a day, 7 days a week for transfers. She explained that MassHealth considers transfers the act

of physically assisting the appellant from a seated to standing position. Transfer precipitates mobility. The time does not include prompting, coaching, or waiting by the PCA. The time is calculated based solely on the amount of hands-on time the PCA spends assisting the appellant move from a seated position to standing.

The appellant's representatives testified that due to the appellant's cognition issues she requires prompting several times before she will comprehend the instruction, and the requested time takes into account the amount of effort expended by the PCA to get the appellant to complete the task, thus it takes longer than three minutes to complete the transfer task. The appellant's representative noted that the appellant does have a mechanical lift chair, however that was not utilized during the assessment. Additionally, the appellant does have a walker, though she was not using it at the time of the evaluation and is resistant to using it.

Bathing/Showering

The appellant requested 50 minutes per day, 7 days per week for a daily shower. MassHealth modified the request to 40 minutes, 7 days a week because the time requested was longer than ordinarily required. The MassHealth representative testified that the appellant was approved for 40 minutes for a daily shower which included the PCA getting the appellant into the shower, bathing upper and lower body, washing hair, and drying the appellant. The appellant does not assist in any of these tasks. MassHealth noted that given the appellant's cognitive condition, any longer than 40 minutes showering would be excessive and contraindicated for her medical condition.

MassHealth noted that the appellant receives additional PCA time for a separate PM washing and receives additional time for perineal care/cleaning during the toileting tasks.

Findings of Fact

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

1. The appellant is a MassHealth member over the age of 65 with a primary diagnosis of Alzheimer's, age related debility, and arthritis. (Testimony and Exhibit 5).
2. MassHealth received a prior authorization request for PCA services on May 5, 2022, requesting 55 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per night, 7 nights per week for dates of service of May 29, 2022, through May 28, 2023. (Testimony and Exhibit 5).
3. MassHealth modified the request to 51 hours and 45 minutes of day/evening hours per week and approved the 2 nighttime hours per night (Testimony and Exhibit 5).
4. At hearing, the parties were able to resolve disputes related to PCA assistance with the following ADLs: pm wash, grooming (other) and medication assistance. (Testimony).
5. The appellant seeks time for PCA assistance with mobility as follows: 8 minutes, 7 times per

day, 7 days a week. (Testimony and Exhibit 5)

6. MassHealth modified the request to 7 minutes, 7 times per day, 7 days a week. (Testimony and Exhibit 5).
7. The appellant seeks time for PCA assistance with transfers as follows: 5 minutes, 6 times per day, 7 days per week. (Testimony and Exhibit 5).
7. MassHealth modified the request to 3 minutes, 6 times per day, 7 days per week. (Testimony and Exhibit 5).
8. The appellant seeks time for PCA assistance with bathing as follows: 50 minutes per day, 1 time per day, 7 days per week. (Testimony and Exhibit 5)
9. MassHealth modified the request to 40 minutes, 1 time per day, 7 days per week. (Testimony and Exhibit 5).
7. Due to cognitive impairments, the appellant needs repeated prompting to complete tasks. (Testimony)

Analysis and Conclusions of Law

Pursuant to 130 CMR 403 (C), MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all 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.

MassHealth regulations define Activities of Daily Living (ADL's) under 130 CMR 422.410(A), and 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 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.

MassHealth defines Instrumental Activities of Daily Living (IADL) under 130 CMR 422.410(B). They are defined as follows:

- (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.

The requested services must be medically necessary for the 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. MassHealth regulation, 130 CMR 450.204 provides that 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

Further, pursuant to 130 CMR 450.204 (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 the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.

Pursuant to 130 CMR 422.412, 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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency. 422.413: Payment for PCA Services.

At the hearing, the parties were able to resolve the disputes related to PCA assistance with: PM washing, grooming (other), and medication assistance. Accordingly, the appeal with regard to those ADLs is DISMISSED.

The three remaining issues in dispute were the modifications related to mobility, transfers, and bathing. After a review of the evidence and the applicable regulations, there is insufficient evidence to make a finding that MassHealth erred in its modifications.

The testimony offered in support of the appellant's position that an additional minute be added to each unit for mobility was based on the PCA providing cueing and coaching to the appellant to complete the task. Pursuant to 130 CMR 422.412(C), MassHealth does not cover time for cueing, coaching, and/or supervision. For this reason, the appellant has not shown that any further PCA assistance with mobility is medically necessary. Accordingly, the appellant's request for restoration of the requested mobility time is DENIED.

The testimony regarding the request for additional time for the task of transfers is based on the amount of time the PCA provides cueing and coaching to the appellant to move from a seated position to standing. MassHealth testified the time allocated for transfers is based solely on the hands-on time that a PCA must physically assist the appellant from moving from a seated to position to standing. Pursuant to 130 CMR 422.412(C), MassHealth does not cover time for cueing, coaching, and/or supervision. For this reason, the appellant has not shown that any further PCA assistance with transfers is medically necessary. Accordingly, the appellant's request for restoration of the transfer time is DENIED.

The evidence does not support a finding that MassHealth erred in modifying the bathing/shower time. In addition to the daily shower, the appellant receives additional time throughout the day for

perineal care/cleaning and receives another allocation of time for a PM wash up. The record does not include any testimony that demonstrates that an additional ten minutes of shower time are medically necessary. Further, MassHealth noted in its testimony, that 50 minutes in a shower for a cognitively impaired individual is contraindicated. MassHealth also pointed out that the appellant has been provided with several blocks of time throughout the day to ensure proper management of the appellant's hygiene. For this reason, the appellant has not shown that the restoration of time for the daily shower is medically necessary. Accordingly, the appellant's request for restoration of the bathing/shower time is DENIED.

For these reasons, the appeal is DENIED in part and DISMISSED in part.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

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

Appellant Representative: [REDACTED]