

ArtOffice of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Dismissed in part

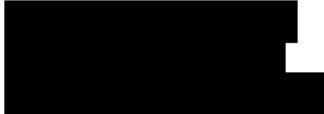
Appeal Number: 2204672

Decision Date: 8/31/2022

Hearing Date: 08/05/2022

Hearing Officer: Scott Bernard

Appearance for Appellant:




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

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| Appeal Decision: | Approve in part; Dismissed in part | Issue: | Prior Authorization (PA) Personal Care Attendant (PCA) Services |
| Decision Date: | 8/31/2022 | Hearing Date: | 08/05/2022 |
| MassHealth's Rep.: | Donna Burns, RN | Appellant's Rep.: |  |
| Hearing Location: | Taunton MassHealth Enrollment Center | | |

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 26, 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. 13, pp. 3, 4-6). The appellant filed this appeal in a timely manner on June 21, 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. The MassHealth representative stated that the appellant is an individual over the age of 40 and has cerebral palsy with spastic quadriplegia. (Ex. 4, pp. 9-10). On May 23, 2022, MassHealth received a PCA PA reevaluation request from the personal care management (PCM) agency for 89 hours of day and evening and two night-time hours per night of PCA services for one year. (Ex. 1; Ex. 4, pp. 3, 4-6). On May 26, 2022 MassHealth notified the appellant that it was modifying the PA request and approving 79 hours of day and evening and two night-time hours per night for a PA period from June 15, 2022 through June 14, 2023. (Id.). MassHealth specifically modified the following activities of daily living (ADLs) and instrumental ADLs (IADLs): dressing, undressing, eating, meal preparation and medical transportation. (Id.).

1. Dressing and Undressing

The PCM agency described the assistance provided for dressing as “Physical assist upper extremity dressing; Physical assist lower extremity dressing; Physical assist with donning footwear; Physical assist with prosthetics and orthotics/braces.” (Ex. 4, p. 16). The PCM agency requested 15 minutes, three times per day, seven days per week for dressing and 10 minutes, three times per day, seven days per week for undressing. (Ex. 4, p. 16-17). The PCM agency listed the appellant’s level of assistance as total dependence. (Id.). The PCM agency described assistance provided for undressing as “Physical assist upper extremity undressing; Physical assist lower extremity undressing; Physical assist with removing footwear; Physical assist with prosthetics and orthotics/braces.” (Ex. 4, p. 17). The PCM agency commented for both dressing and undressing that “dressed and undressed done in am and pm and and [sic] at least 1 additional time d/t reports of sweating d/t continuous movement and pain d/t TD and CP.” (Ex. 4, p. 17).

MassHealth modified the frequency of daily occurrences for both dressing and undressing to two times per day because “the time the requested for assistance with dressing¹ is longer than ordinarily required for someone with your physical needs.” (Ex. 1; Ex. 2, pp. 5-10; Ex. 4, pp. 3, 4-7).

The MassHealth representative stated that the appellant had a hearing the previous year where this was an issue. The PCM agency submitted the request at that time stating that the need for extra time was due to the appellant’s excessive sweating. It was also denied because it was longer than ordinarily required. At that time, the appellant and MassHealth decided that two of the changes were full body changes. The modification was therefore adjusted to 10 minutes one time per day and five minutes two times per day.

The MassHealth representative asked the appellant what had changed since that time. The appellant stated that she is sweating more at this time. The appellant’s mother stated that the appellant was menopausal and was having hot flashes like crazy. The appellant also had low blood sugar which causes sweating. The appellant’s shirts and pants will become soaked with sweat. The third change,

¹ The MassHealth notice, which treats dressing and undressing as separate activities, does not contain a separate justification for the modification to undressing, so it is presumed that the dressing justification is applicable to undressing.

which was the partial change, had become a complete change over the last year. The MassHealth representative inquired as to why the time requested for undressing had increased from five to 10 minutes per episode. The appellant stated that her body had become a lot tighter due to an increase in her spasticity, which makes it harder to remove her clothes.

The MassHealth representative wanted to clarify how many times per day the appellant was getting dressed and undressed. The appellant's mother stated that the appellant got dressed once in the morning, then undressed and dressed again in the evening. The appellant's mother stated that depending on her bodily activity or whether she is having a hot flash, the appellant might require another full body change but that this was unpredictable. The MassHealth representative asked and the appellant and the appellant's mother confirmed that absent a hot flash, the third change is generally into bed clothes. The MassHealth representative stated that MassHealth treats putting on bedclothes as part of the last daily episode of undressing. Normally MassHealth only pays for one dressing and one undressing per day and does not pay for an extra dressing to get into bed clothes.

2. Eating

The PCM agency described eating as physical assistance with eating and drinking. (Ex. 4, p. 18). The PCM agency requested 15 minutes, eight times per day, seven days per week during the day and evening and an additional 15 minutes per night for assistance with eating. (*Id.*). The PCM agency commented "[E]ating- can tolerate all foods and all textures. D[ependent] feeding, D hold cup with straw, no finger foods. [E]ats 4[:30 am snack to prevent BS, 6[:30 gets 1/2 breakfast, at 9 am the other 1/2 breakfast, 1/2 lunch at 12 noon, the other 1/2 at 2[:30, 4[:30pm 1/2 dinner, 6 to 6[:30 the other 1/2 of dinner. [S]nack at 8pm. one more snack before bed. We observed her being fed by mother and it took less than 10 min. we observed mother giving her drinks with a straw. [M]other reported she has esophageal stricture causing GERD..." (*Id.*).

MassHealth modified this to 10 minutes, six times per day, seven days per week; five minutes, two times per day, seven days per week; and five minutes per night "because the time you requested for assistance with eating is longer than ordinarily required for someone with your physical needs. (Ex. 1; Ex. 2, pp. 5-10; Ex. 4, pp. 3, 4-7). The appellant's mother, who is her PCA, stated that the appellant has very little control of her tongue while she eats and requires constant monitoring. The appellant also requires her nose to be wiped since it constantly runs. The appellant stated that she is completely dependent on others for eating. The MassHealth representative offered to adjust the modification to 15 minutes, six times per day. She stated that the standard for total dependent is 30 minutes, three times per day, which would be the equivalent total amount of time (90 minutes per day). The appellant agreed to accept this adjustment.

3. Meal Preparation

The PCM agency requested 15 minutes per day for breakfast; 30 minutes per day for lunch; 45 minutes per day for dinner; and 10 minutes per day for snack. (Ex. 4, p. 24). This totaled 100 minutes per day, seven days per week. (*Id.*). The PCM agency wrote that the appellant was totally dependent for assistance with breakfast, dinner, and snacks and required maximum assistance with lunch. (*Id.*). The PCM agency commented that the appellant was "[D]ependent] all meal set clean up and prep d make 2 snacks daily. (see eating for feeding schedule). 6 small meals, 2 snacks daily and

one at 4[:]30am. Mother was fixated about minutes per meal, and we told her we did the eval based on what we saw and our clinical expertise while following guidelines. we also reminded her [the appellant] has no surrogate. She kept talking about eval and times requested in the past and I explained to [the appellant] each year is a new eval. Mother started talking about MD saying she needs '30 min per meal' Mother was concerned we would change the times after we told [the appellant] what we were requesting and I told her we have integrity and would not do that. We agreed to send out a copy of this eval for [the appellant] to review.” (Id.).

MassHealth modified the time request for meal preparation to 90 minutes per day “because the time you requested for assistance with household services is longer than ordinarily required for someone with your physical needs.” (Ex. 1; Ex. 2, pp. 5-10; Ex. 4, pp. 3, 4-7). The appellant agreed to this modification since it was only 10 minutes per day total.

4. Medical Transportation

The PCM agency requested 252 minutes per week for assistance with medical transportation. (Ex. 4, pp. 23-24). MassHealth modified this to 244 minutes per week because two of the listed medical providers, requiring four minutes per week apiece, were not Massachusetts providers. (Ex. 1; Ex. 2, pp. 5-10; Ex. 4, pp. 3, 4-7, 24). The appellant agreed to this modification because the providers were not Massachusetts providers.

Findings of Fact

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

1. The appellant is an individual over the age of 40 and has cerebral palsy with spastic quadriplegia. (Ex. 4, pp. 9-10).
2. On May 23, 2022, MassHealth received a PCA PA reevaluation request from the PCM agency for 89 hours day and evening PCA services and two night-time hours per night for one year. (Testimony of the MassHealth representative; Ex. 1; Ex. 4, pp. 3, 4-6).
3. On May 26, 2022 MassHealth notified the appellant that it was modifying the PA request and approving 79 hours of day and evening and two night-time hours per night for a PA period from June 15, 2022 through June 14, 2023. (Ex. 4, pp. 3, 4-6).
4. MassHealth specifically modified the following activities of daily living (ADLs) and instrumental ADLs (IADLs): dressing, undressing, eating, meal preparation and medical transportation. (Ex. 4, pp. 3, 4-6).
 - a. Dressing and Undressing
 1. The PCM agency requested 15 minutes, three times per day, seven days per week for dressing and 10 minutes, three times per day, seven days per week for undressing. (Ex. 4, p. 16-17).

2. The PCM agency listed the appellant's level of assistance as total dependence. (Id.).
 3. The PCM agency described the assistance provided for dressing as "Physical assist upper extremity dressing; Physical assist lower extremity dressing; Physical assist with donning footwear; Physical assist with prosthetics and orthotics/braces." (Ex. 4, p. 16).
 4. The PCM agency described assistance provided for undressing as "Physical assist upper extremity undressing; Physical assist lower extremity undressing; Physical assist with removing footwear; Physical assist with prosthetics and orthotics/braces." (Ex. 4, p. 17).
 5. The PCM agency commented for both dressing and undressing that "dressed and undressed done in am and pm and and [sic] at least 1 additional time d/t reports of sweating d/t continuous movement and pain d/t TD and CP." (Ex. 4, p. 17).
 6. MassHealth modified the frequency of daily occurrences for both dressing and undressing to two times per day because "the time the requested for assistance with dressing is longer than ordinarily required for someone with your physical needs." (Ex. 1; Ex. 2, pp. 5-10; Ex. 4, pp. 3, 4-7).
 7. The appellant gets dressed once in the morning, changes clothes once during the day, and changes into bedclothes at night. (Testimony of the appellant; Testimony of the appellant's mother).
 8. The appellant may have other full changes during the day depending on whether she us having a hot flash, but this was not predictable. (Testimony of the appellant's mother).
- b. Eating
1. The PCM agency requested 15 minutes, eight times per day, seven days per weeks during the day and evening and an additional 15 minutes per night for assistance with eating. (Ex. 4, p. 18).
 2. The PCM agency commented "[E]ating- can tolerate all foods and all textures. D[ependent] feeding, D hold cup with straw, no finger foods. [E]ats 4[:30] am snack to prevent BS, 6[:30] gets 1/2 breakfast, at 9 am the other 1/2 breakfast , 1/2 lunch at 12 noon, the other 1/2 at 2[:30], 4[:30]pm 1/2 dinner, 6 to 6[:30] the other 1/2 of dinner. [S]]nack at 8pm. one more snack before bed. We observed her being fed by mother and it look less than 10 min. we observed mother giving her drinks with a straw. [M]other reported she has esophageal stricture causing GERD..." (Ex. 4, p. 18).
 3. MassHealth modified this to 10 minutes, six time per day, seven days per week; five minutes, two times per day, seven days per week; and five minutes per night "because the time you requested for assistance with eating is longer than ordinarily required for someone with your physical needs. (Ex. 1; Ex. 2, pp. 5-10; Ex. 4, pp. 3, 4-7).

4. The MassHealth representative offered to adjust the modification to 15 minutes, six times per day. (Testimony of the MassHealth representative).
 5. The standard for total dependence is 30 minutes, three times per day, which would be the equivalent total amount of time (90 minutes per day). (Testimony of the MassHealth representative).
 6. The appellant agreed to accept this adjustment. (Testimony of the MassHealth representative).
- c. Meal Preparation
1. The PCM agency requested 15 minutes per day for breakfast; 30 minutes per day for lunch; 45 minutes per day for dinner; and 10 minutes per day for snack. (Ex. 4, p. 24).
 2. This totaled 100 minutes per day, seven days per week. (Ex. 4, p. 24).
 3. The PCM agency wrote that the appellant was totally dependent for assistance with breakfast, dinner, and snacks and required maximum assistance with lunch. (Ex. 4, p. 24).
 4. The appellant agreed to this modification. (Testimony of the appellant).
- d. Medical Transportation
1. The PCM agency requested 252 minutes per week for assistance with medical transportation. (Ex. 4, pp. 23-24).
 2. MassHealth modified this to 244 minutes per week because two of the listed medical providers, requiring four minutes per week apiece, were not Massachusetts providers. (Ex. 1; Ex. 2, pp. 5-10; Ex. 4, pp. 3, 4-7, 24).
 3. The appellant agreed to this modification because the providers were not Massachusetts providers. (Testimony of the appellant).

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 two IADLs. During the course of the hearing, MassHealth adjusted its modification of the time for eating to 15 minutes, six times per day, seven days per week. The appellant accepted this adjustment. The appellant decided that she did not oppose the modifications to meal preparation and medical transportation. 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 eating; and the appellant did not contest the modifications to meal preparation and medical transportation, concerning these three ADLs/IADLs the appeal is DISMISSED.

For that reason, the only issue that remains concerns the modification to the time requested for assistance with dressing and undressing. Specifically, the PCM agency requested that the appellant receive assistance with dressing and undressing three times per day apiece. MassHealth reduced this to two times per day. The appellant's mother's testimony indicated that the appellant gets dressed in the morning, has a change later in the day (i.e. gets undressed, then dressed), and then changes into bedclothes. MassHealth argued that this constitutes two full changes only. The MassHealth representative states that MassHealth does not count getting into bedclothes at night as an episode of dressing, just as it does not count getting out of bedclothes in the morning as an episode of undressing. The MassHealth regulations describe dressing as "physically assisting a member to dress or undress." (130 CMR 422.410(A)(4)). The MassHealth regulations do not discriminate concerning what clothes are put on or taken off. MassHealth's interpretation of this rule is therefore not reasonable under these circumstances. The appellant stated that she puts on bedclothes at night, which also implies she takes them off in the morning. For that reason, the third episode of dressing and undressing is supported under these circumstances.

For the above stated reasons, concerning dressing and undressing, the appeal is APPROVED.

Order for MassHealth

Issue a new notice approving three episodes of dressing and three episodes of undressing per day. If it has not already done so, MassHealth should also notify the appellant that the modification concerning

eating has been adjusted to 15 minutes, six times per day, seven days per week.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]