

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed-in-part	Appeal Number:	2205439
Decision Date:	10/14/2022	Hearing Date:	09/02/2022
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Cheryl Eastman, 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:	10/14/2022	Hearing Date:	09/02/2022
MassHealth's Rep.:	Cheryl Eastman, R.N.	Appellant's Rep.:	Sister
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 June 27, 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 a timely fair hearing request on July 21, 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 her sister. 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 65 and has diagnosis of intellectual disability. See Exh. 4, pp. 12-13. She had an ileostomy due to severe ulcerative colitis, a colon removal in 2004, and rectal stump removal in 2010. Id. at 13. On June 21, 2022, MassHealth received an initial prior authorization (PA) request from Appellant's personal care management (PCM) agency, seeking personal care attendant (PCA) services for Appellant for dates of service beginning June 27, 2022 through June 26, 2023. Id. at 3. The PA request sought approval for 11 hours and 30 minutes per week of day/evening PCA services and two hours per night (14 hours per week) of nighttime PCA services.¹

Through a letter dated June 27, 2022, MassHealth notified Appellant that it modified her PA request by approving 10 hours and 30 minutes per-week of day/evening services and zero (0) nighttime hours. See Exh. 1. For the day/evening services, MassHealth made modifications to the time and/or frequency requested for the following activities of daily living (ADLs): (1) bathing; (2) grooming/oral care; (3) medication pre-pour; and (4) meal preparation/lunch. Id. Additionally, MassHealth modified the time requested for nighttime bowel care. Id.

At hearing, the parties resolved the dispute concerning all day/evening ADL modifications. Specifically, MassHealth agreed to approve the time, as was requested in the PA, for bathing (20x1x7), grooming/oral care (1x1x7); medication pre-pour (5x1x1); and meal preparation/lunch (15x1x7). See Exh. 4, pp. 17-27.

The only remaining issue in dispute concerned Appellant's request for nighttime assistance with ostomy venting, which fell under the ADL of bowel care. The PCM agency requested two minutes, *three times per-night* (six minutes per night) for physical assistance in this category. See id. at 21. Specifically, the PCM agency noted the number "2" under the "Min/Eps" section and "3" under the "Eps/Ngt" section of the PA request, along with the following comments regarding her toileting needs:

[Independent] on [and] off toilet, needs [assistance] to empty and vent bag;
[occasional] incontinence...Ostomy needs to be vented x3 during the night at
times as may have bloating. Time averaged.

Id.

At hearing, the MassHealth representative testified that Appellant's PCM agency requested nighttime bowel care at 2 minutes, 3 *nights* per-week. MassHealth's denied the request for

¹ In the modification letter, discussed below, MassHealth indicated that Appellant requested two hours of PCA assistance per-night, however, the PA request and MassHealth's testimony at hearing indicates Appellant only sought six minutes per night.

nighttime services due to lack of medical necessity. The MassHealth representative explained that the request appeared to be for “anticipatory” care, as it was not needed on a nightly basis, and the PCM agency “averaged” the time needed to complete the task. MassHealth does not pay for “anticipatory” services and this was the only nighttime service requested. When reviewing this case, MassHealth looked at whether it was necessary for a PCA to come during the night to solely to perform this task (as no other nighttime services were requested), and without knowing which night the assistance would occur. In contrast, the MassHealth reviewer weighed the fact that Appellant lives with multiple family members that are capable of performing this task, which essentially involves opening a cap on the colostomy bag to vent out the air.

In response, Appellant’s sister questioned who the “multiple family members” were that MassHealth stated could perform this task. The sister explained that her husband (Appellant’s brother-in-law) does not perform this task as it is a very intimate and personal function. It’s not simply opening a little tab, but rather opening the bag to let the air out. Furthermore, it is not anticipatory. Appellant’s sister testified that she has been doing this task every night, three times per night, for a year-and-a-half under physician order. If the bag is not emptied it will unquestionably blow up, as it has in the past, leaving Appellant lying in a pool of feces. Because this is an essential task, Appellant’s physician wrote a letter of medical necessity, which was sent with the fair hearing request. The sister explained it is not sustainable for her to wake up three times during the night and this is the whole reason she is looking for a PCA to assist in this task.

Prior to hearing, Appellant submitted a letter signed by Appellant’s gastroenterologist, Prakash Rau, M.D., at Brigham & Women’s Health, which stated that “[i]t is medically necessary that [Appellant] have her ostomy bag vented at least 3 times a night due to severe bloating.” Exh. 2, p. 3.

Findings of Fact

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

1. Appellant is a MassHealth member over the age of 65 and has a diagnosis of intellectual disability and a medical history of an ileostomy due to severe ulcerative colitis, a colon removal in 2004, and rectal stump removal in 2010.
2. On June 21, 2022, MassHealth received an initial PA request from PCM agency, seeking PCA services for Appellant for dates of service beginning June 27, 2022 through June 26, 2023.
3. The PA request sought approval for 11 hours and 30 minutes per-week of day/evening PCA services and two hours per night (14 hours per week) of nighttime PCA services.
4. Through a letter dated June 27, 2022, MassHealth notified Appellant that it modified her PA request by approving 10 hours and 30 minutes per-week of day/evening services and zero (0) nighttime hours.

5. For the day/evening services, MassHealth made modifications to the time and/or frequency requested for the following ADLs (1) bathing; (2) grooming/oral care; (3) medication pre-pour; and (4) meal preparation/lunch. Id. Additionally, MassHealth modified the time requested for nighttime bowel care. Id.
6. At the hearing, MassHealth agreed to approve the time requested in the PA for bathing (20x1x7), grooming/oral care (1x1x7); medication pre-pour (5x1x1); and meal preparation/lunch (15x1x7), thereby resolving the dispute over these modifications.
7. With respect to the remaining modification, Appellant requested assistance with nighttime bowel care at two minutes, *three times per-night* (six minutes per night) for physical assistance in venting her ostomy bag
8. In the PA request, the PCM agency documented this request by noting the number “2” under the “Min/Eps” section and “3” under the “Eps/Ngt” section of the PA request, along with the commenting that Appellant is “[Independent] on [and] off toilet, needs [assistance] to empty and vent bag; [occasional] incontinence...Ostomy needs to be vented x3 during the night at times as may have bloating. Time averaged.” Exh. 4, p. 21.
9. MassHealth interpreted the PA as requesting nighttime bowel care assistance at 2 minutes, *3 nights* per-week.
10. MassHealth’s denied the request for nighttime bowel care, due in part, to its determination that it for “anticipatory” care, that it was the only nighttime service requested and not needed every night, and that it would be unlikely a PCA would perform nighttime hours solely for this task, where there are other available caregivers in the home.
11. Currently, the only available caregiver to perform this task is Appellant’s sister and she has been doing so, three times per night, every night, for the past year-and-a-half.
12. The task is not “anticipatory” at is required at least three times per night, every night, and failing to do so causes the ostomy bag to “blow up.”
13. Appellant’s gastroenterologist submitted a letter indicating that “[i]t is medically necessary that [Appellant] have her ostomy bag vented at least 3 times a night due to severe bloating.” Exh. 2, p. 3.

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:² 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).

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 her activities of daily living (ADLs) to meet her health care needs. The ADLs that are within the scope of the PCA program are set forth as follows:

(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;

² 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 422.402.

(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 (emphasis added).

MassHealth will reimburse for the “activity time performed by a PCA in providing assistance with the ADL.” 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). Additionally, MassHealth classifies approved or modified PCA time as either consisting of “day/evening hours,” which are performed between 6:00A.M. to 12:00A.M., and “Night Hours,” which are services performed between the hours of 12:00A.M. to 6:00A.M. See 130 CMR 422.402.

At hearing, MassHealth rescinded the modifications it made to the time requested for the day/evening ADLs but upheld its decision to deny the request for nighttime bowel care. According to the PA request, Appellant’s PCM agency requested two minutes, *three times per night* (6 minutes per night), to assist in venting Appellant’s ostomy bag. In contrast, MassHealth testified at hearing that Appellant requested assistance at two minutes, *three nights per week* (2x3). MassHealth’s decision to deny nighttime bowel care was based, in part, on the understanding that Appellant did not require the service nightly (i.e. only three nights per-week), and thus, the request was for “anticipatory” care, which MassHealth does not cover. A review of the documentation, however, does not support MassHealth’s interpretation that the request was for only three nights per-week. Appellant’s PCM agency wrote “2” under the “Mins/Ep” section and “3” under the “Eps/Ngt” section of the PA request, for a total of 6 minutes per-night, or 42 minutes per-week of nighttime bowel care. The medical necessity for this task to be performed nightly is supported by the testimony provided by Appellant’s sister and the letter of medical necessity submitted by Appellant’s gastroenterologist. See Exh. 2, p. 3. Based on the evidence in the hearing record, Appellant successfully demonstrated that she requires PCA assistance with nighttime bowel care as requested: two minutes, three times per-night, seven days per-week (2x3x7). See 130 CMR 422.410(7).

The appeal is APPROVED-in-part with respect to Appellant’s request for nighttime PCA services.

The appeal is DISMISSED-in-part with respect to the day/evening ADL modifications, as MassHealth agreed, at the hearing, to approve the time requested for bathing (20x1x7); grooming/oral care (1x1x7); medication pre-pour (5x1x1); and meal preparation/lunch (15x1x7).

Order for MassHealth

For the PA period beginning June 27, 2022 through June 26, 2023, approve Appellant's request for nighttime PCA assistance with bowel care at 2x3x7; and, in accordance with the agreement at hearing, rescind the modifications to Appellant's day/evening PCA hours and approve the times requested for bathing (20x1x7); grooming/oral care (1x1x7); medication pre-pour (5x1x1); and meal preparation/lunch (15x1x7).

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, Esq.
Hearing Officer
Board of Hearings

cc:

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

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