

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2205441
Decision Date:	9/28/2022	Hearing Date:	08/31/2022
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliott



*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
Decision Date:	9/28/2022	Hearing Date:	08/31/2022
MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone	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 July 11, 2022 MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1A; Exhibit 1B). The appellant filed this appeal in a timely manner on July 21, 2022. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care services.

Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for personal care services.

Summary of Evidence

The appellant is an adult who has a primary diagnosis of advanced spinal muscular atrophy (SMA II). (Testimony; Exhibit 4). The appellant is totally dependent for all Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) due to SMA II. The appellant is paralyzed in all extremities with no sensation or function. The appellant was recently diagnosed with arthritis in the major joints and numbness/neuropathy in both legs and feet. The appellant also has the following diagnoses: severe sciatica in the right hip to toes with pain worse at night; hypertension; severe muscle spasms in the torso and all extremities; herniated lumbar disc 7; scoliosis; pain in all major joints; gastroesophageal reflux disease (GERD); a gastrointestinal (GI) bleed; dysphagia; poor cough; decrease in respiratory effort; chronic skin breakdown; and diaphoresis at night. The appellant is suctioned 24/7 and has had a noticeable physical decline. (Testimony; Exhibit 4).

The appellant requested 111.0 day/evening hours per week and 4 nighttime hours. (Testimony; Exhibit 4). MassHealth modified this request and approved 106.25 day/evening hours each week and 3 nighttime hours. (Testimony; Exhibit 4). The dates of service are July 15, 2022 to July 14, 2023. (Testimony; Exhibit 4).

Upon hearing testimony and reviewing evidence at hearing, MassHealth adjusted their decision and approved the time requested for: hair care (3 minutes, two times each day); use of a stander (25 minutes, two times each day); and nighttime services (4 hours each night). The parties agreed that the only issue remaining was the time requested for the care and maintenance of the appellant's equipment. The appellant requested 186 minutes each week for equipment maintenance and MassHealth approved 120 minutes each week.

The appellant's representative noted that the appellant utilizes at least 8 pieces of equipment including a hospital bed, Hoya lift, shower chair, suctioning equipment, stander, continuous positive airway pressure (CPAP) machine and a wheelchair. (Testimony; Exhibit 4). The appellant's representative noted that the time requested by the appellant included time for cleaning, maintaining and confirming the functioning of the equipment so it can continue to serve the appellant's needs. The appellant's representative testified that it can take at least 25 minutes each day to help maintain the equipment. The appellant's representative testified that sometimes technical or physical issues arise with some of the more complex equipment including the wheelchair, hospital bed and stander. Some of the tasks the appellant associated with equipment maintenance included cleaning a shower chair and ensuring pieces of equipment are correctly positioned prior to use.

The MassHealth representative responded that if more complex issues arise with the equipment, the company should be contacted rather than the PCA attempting to address an issue with the functioning of the equipment. Additionally, tasks such as cleaning a shower chair and repositioning equipment for use during a given task are all considered in the time for the tasks associated with the equipment. In general, tasks associated with equipment maintenance can vary from daily, weekly or as needed. The MassHealth representative noted that this category of care and maintenance of equipment goes beyond the tasks associated with the use of the equipment.

Findings of Fact

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

1. The appellant is an adult who has a primary diagnosis of advanced spinal muscular atrophy (SMA II).
2. The appellant is totally dependent for all Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) due to SMA II.
3. The appellant is paralyzed in all extremities with no sensation or function.
4. The appellant was recently diagnosed with arthritis in the major joints and numbness/neuropathy in both legs and feet.
5. The appellant also has the following diagnoses: severe sciatica in the right hip to toes with pain worse at night; hypertension; severe muscle spasms in the torso and all extremities; herniated lumbar disc 7; scoliosis; pain in all major joints; gastroesophageal reflux disease (GERD); a gastrointestinal (GI) bleed; dysphagia; a poor cough; a decrease in respiratory effect; chronic skin breakdown; and diaphoresis at night.
6. The appellant is suctioned 24/7 and has had a noticeable physical decline.
7. The appellant requested 111.0 day/evening hours per week and 4 nighttime hours.
8. MassHealth modified this request and approved 106.25 day/evening hours each week and 3 nighttime hours.

9. The dates of service are July 15, 2022 to July 14, 2023.
10. At hearing, MassHealth adjusted their decision and approved the following time as requested:
 - hair care (3 minutes, two times each day);
 - use of a stander (25 minutes, two times each day); and
 - nighttime services (4 hours each night).
11. The appellant requested 186 minutes each week for equipment maintenance.
12. MassHealth approved approximately 17 minutes each day or a total of 120 minutes each week for time associated with equipment maintenance.
13. The appellant utilizes at least 8 pieces of equipment including: a hospital bed, hoya lift, shower chair, suctioning equipment, stander, continuous positive airway pressure (CPAP) machine and wheelchair.
14. At times, technical or physical issues may arise with some equipment including the wheelchair, hospital bed and stander.
15. At times, the PCA attempts to resolve issues on their own.
16. In general, tasks associated with equipment maintenance can vary from daily, weekly or as needed.
17. In approving time associated with maintaining equipment MassHealth includes tasks beyond those associated with the basic use of the equipment.
18. The request for maintaining equipment submitted by the appellant included tasks such as daily cleaning and repositioning related to the use of the equipment.

Analysis and Conclusions of Law

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). MassHealth covers personal care

services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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 personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - a. mobility, including transfers;
 - b. medications;
 - c. bathing/grooming;
 - d. dressing or undressing;
 - e. range-of-motion exercises;
 - f. eating; and
 - g. toileting.
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as "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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

Upon hearing testimony and reviewing evidence at hearing, MassHealth restored

the time requested for: hair care (3 minutes, two times each day); use of a stander (25 minutes, two times each day); and nighttime services (4 hours each night). As MassHealth agreed to adjust their decision and approve the time requested, the appeal associated with those tasks is dismissed. (130 CMR 610.051(B)).

The only issue remaining was the time requested for equipment maintenance which falls under the category of Instrumental Activities of Daily Living (IADLs) as they include:

- (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. (130 CMR 422.410(B)).

In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for instrumental activities of daily living (IADLs), MassHealth will consider individual circumstances. (130 CMR 422.410(C)(3)).

The appellant's request for time associated with cleaning and maintaining equipment falls under the category of other special needs. (130 CMR 422.410(B)). In reviewing this request, MassHealth did consider the individual circumstances of the appellant including the amount and type of equipment utilized by the appellant. (130 CMR 422.410(B)). The appellant's argument regarding the cleaning or repositioning of some equipment for proper use did not appear to involve care and maintenance that would be beyond performing the task associated with the equipment or general housekeeping. MassHealth's argument that one would perform tasks such as basic cleaning and repositioning as part of the activity associated with the equipment was more persuasive. MassHealth was correct in adjusting the time for cleaning and maintenance from 186 minutes each week to 120 minutes each week.

This appeal is dismissed in part and denied in part.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve the following as of July 15, 2022:

- hair care (3 minutes, two times each day); and
- use of a stander (25 minutes, two times each day); and
- nighttime services (4 hours each night).

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 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

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

Appellant Representative: [REDACTED]