

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2205828
Decision Date:	10/12/2022	Hearing Date:	09/14/2022
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary Jo Elliott

Interpreter: Interpreters and Translators,
Inc., #203004



*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	Issue:	Prior Authorization
Decision Date:	10/12/2022	Hearing Date:	09/14/2022
MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	Pro se
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 7, 2022, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). An appeal was filed in a timely manner on August 4, 2022. (130 CMR 610.015(B); Exhibit 2). The request for hearing form did not have a signature. (Exhibit 2). On August 9, 2022, the Board of Hearings dismissed the appeal as the request for hearing did not demonstrate that the individual filing the appeal was a MassHealth member, applicant, nursing home resident or appeal representative. (130 CMR 610.035; Exhibit 3). On August 16, 2022, the Board of Hearings received a request for hearing form signed by the appellant. (Exhibit 4). On August 22, 2022, the Board of Hearings vacated the dismissal and scheduled a hearing for September 14, 2022. (130 CMR 610.048 ; Exhibit 5).

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 request for personal care services.

Summary of Evidence

The MassHealth representative presented documents that were incorporated into the hearing record as Exhibit 6. The appellant has a primary diagnosis of rheumatoid arthritis. The appellant also has cervical degenerative spondylosis, fibromyalgia and edema of the bilateral lower extremities. The appellant has a history of multiple surgeries including: knee, neck, left shoulder, left elbow, a hip replacement and gastric bypass.

The appellant was receiving Home Health Services (HHS) before submitting an initial request for services through the Personal Care Attendant (PCA) program. The appellant requested 21.5 hours of PCA services each week and no nighttime hours. MassHealth modified this request and approved the appellant for 19.25 hours each week and no nighttime hours. The dates of service are July 7, 2022 through July 6, 2023.

MassHealth made two modifications to the time requested for services. The first modification was to the time requested for showering. The appellant requested 40 minutes each day for showering. MassHealth modified this request and approved 30 minutes each day for showering. The MassHealth representative noted that the agency deemed the time requested as excessive. The MassHealth representative noted that a report from an Occupational Therapist (OT) indicates that the appellant required moderate assistance with activities associated with showering including assistance in and out of the shower, as well as tasks in the shower. The MassHealth representative noted that records indicate that the appellant is independent with walking to and from the bathroom.

The OT report indicates that the appellant is a loss of vision, issues with standing tolerance, balance, bending, reaching, active range of motion (AROM) and squatting. (Exhibit 6). The report indicates that the appellant requires moderate assistance with bathing and maximum assistance with dressing.

An interpreter appeared at the hearing to allow the appellant the opportunity to understand and offer testimony at the hearing. The appellant testified that she has pain in her arms, legs and neck. The appellant testified that she has surgery scheduled to address issues related to her spine. The appellant testified that she cannot hold onto items with her hand due to past surgery and difficulty in bending her fingers. The appellant testified that it takes at least 35 to 40 minutes to take a shower and the PCA performs a most, if not all, of the tasks associated with showering due to the appellant's physical limitations.

The second modification was to the time for meal preparation. MassHealth approved the time requested for assistance with breakfast and lunch. MassHealth modified the time requested for dinner and snack preparation. The appellant requested 45 minutes each day for dinner preparation and 5 minutes each day for snack preparation. MassHealth approved 40 minutes each day for dinner preparation and no time for snack preparation. The MassHealth representative testified that this decision was based on records indicating that the appellant can perform basic tasks on her own. Records show that the appellant requires maximum assistance with preparing dinner. Records show that the appellant requires maximum assistance with preparing breakfast and lunch as well and MassHealth approved the time requested for those tasks.

The appellant testified that she cannot assist in preparing any meals or snacks due to issues with mobility and active range of motion. The appellant testified that she cannot look down to see items on her counter or table when preparing a meal due to the inability to bend her neck. The appellant testified that it makes her nervous to use equipment like a toaster oven as she is unable to see the equipment when using it. The appellant testified that she cannot peel fruit due to a limited ability to move her neck, arms and fingers. The appellant testified that she has snacks once or twice each day.

Findings of Fact

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

1. The appellant has a primary diagnosis of rheumatoid arthritis.
2. The appellant also has cervical degenerative spondylosis, fibromyalgia, and edema of the bilateral lower extremities.
3. The appellant has a history of multiple surgeries including: the knees, neck, left shoulder, left elbow, a hip replacement and gastric bypass.

4. The appellant was receiving Home Health Services (HHS) before submitting an initial request for services through the Personal Care Attendant (PCA) program.
5. The appellant requested 21.5 hours of PCA services each week and no nighttime hours.
6. MassHealth modified this request and approved the appellant for 19.25 hours each week and no nighttime hours.
7. The dates of service are July 7, 2022 through July 6, 2023.
8. The appellant requested 40 minutes each day for assistance with showering.
9. MassHealth modified the request and approved 30 minutes each day for assistance with showering.
10. The appellant has issues with vision, standing, balance, bending, reaching, active range of motion and squatting.
11. A report from an Occupational Therapist indicates that the appellant requires moderate assistance with bathing and maximum assistance with dressing.
12. The appellant has pain in her arms, legs and neck.
13. The appellant has surgery scheduled to address issues related to her spine.
14. The appellant is unable to hold onto items with her hand.
15. Showering takes at least 35 to 40 minutes each day.
16. The PCA performs a most, if not all, of the tasks associated with showering due to the appellant's physical limitations.
17. The appellant requested 45 minutes for assistance with preparation for dinner.
18. MassHealth approved 40 minutes for assistance with preparation for dinner

19. The appellant requested 5 minutes each day for assistance with preparing snacks.
20. MassHealth denied the time requested for assistance with snacks.
21. The appellant has difficulty using appliances such as a toaster oven and stove due to her limited range of motion in the neck and difficulty in using her hands due to pain and difficulty grasping.
22. MassHealth approved the time requested for assistance with preparation of breakfast and lunch.
23. Records indicate that the appellant requires maximum assistance with meal preparation.
24. The appellant has snacks once or twice each day.

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. (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)).

Activities of daily living include physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills. (130 CMR 422.410(A)(3)). The appellant's testimony about her limited mobility, use of her hands and the typical time for showering all demonstrate that the time requested was appropriate. Additionally, records from an OT indicate that the appellant has a loss of vision, issues with standing, balance, bending, reaching and active range of motion. The report also indicates that the appellant requires maximum assistance with dressing. Records presented by MassHealth, testimony presented at hearing and the OT report all support the need for the time requested with showering. (130 CMR 422.410(A)(3)).

In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

- (2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs. (130 CMR 422.410(C)).

The appellant in this case lives alone. MassHealth agreed that the appellant required maximum assistance in preparing breakfast, lunch and dinner yet modified the time requested for dinner and denied time for preparing snacks based on a conclusion that the appellant is able to perform simple tasks on her own. The MassHealth representative did not provide sufficient testimony or evidence to justify the adjustments made to the time requested for assistance with dinner and snacks. Additionally, the appellant's loss of vision, issues with active range of motion and testimony regarding her inability to bend and see the equipment used for assistance with meal preparation all support approval for the time requested for preparation of all meals and snacks.

The records presented and testimony of the appellant demonstrate the need for all of the time requested. The decision made by MassHealth was not correct.

This appeal is approved.

Order for MassHealth

Adjust the decision made in July 2022 and restore the time requested for all activities of daily living and instrumental activities of daily living effective July 7, 2022.

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