

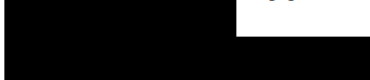
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2206009
Decision Date:	11/2/2022	Hearing Date:	09/29/2022
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:
Mary Jo Elliot, R.N.

Interpreter:

N/A



*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 Approval-PCA services
Decision Date:	11/2/2022	Hearing Date:	09/29/2022
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Rep.:	
Hearing Location:	Remote (telephone)	Aid Pending:	Yes

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 25, 2022, MassHealth modified the appellant's prior authorization for PCA services. (Ex. 1). The appellant filed this appeal in a timely manner on August 9, 2022. (130 CMR 610.015(B) and Ex. 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 was represented by an authorized representative (Exhibit 3) who appeared telephonically. The appellant testified telephonically and called her Personal Care Assistant (“PCA”) to testify telephonically (Testimony). MassHealth was represented by a registered nurse who testified telephonically to the following: the appellant’s primary diagnosis is breast cancer, with relevant secondary diagnoses which include osteoarthritis, neuropathy, chronic pain, bulging discs as well as anxiety and post-traumatic stress among others. The appellant underwent a right breast lumpectomy in 2013 and was further treated with chemotherapy and radiation. The appellant also has undergone spinal surgeries including the insertion of rods and screws as well as the fusion of vertebrae. In 2020, the appellant underwent a mastectomy. Breast cancer has returned to the chest wall despite the mastectomy, and the appellant will once again undergo treatment of chemotherapy and radiation. (Testimony and Exhibit 6, page 8) There is currently aid pending in the amount of 32 hours and 15 minutes per week, and two hours per night. Boston Center for Independent Living, the appellant’s Personal Care Management (“PCM”) Agency, submitted a request on behalf of the appellant for the same amount of 32 hours and 15 minutes per week, and 2 hours per night. MassHealth modified the request to 30 Hours and 45 minutes per week and 2 hours per night for the service period of August 18, 2022, through August 17, 2023. Specifically, there were three modifications to the Instrumental Activities of Daily Living (IADLs): meal preparation, laundry, and housekeeping. (Testimony and Exhibit 6, page 22-23). Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for: laundry (90 minutes, one time per week); and housekeeping (90 minutes, one time per week) (Testimony). The sole remaining issue in dispute is meal preparation.

Regarding meal preparation, the appellant requested 665 minutes total, and MassHealth approved 630. The appellant had requested specifically 15 minutes for breakfast, 30 minutes for lunch, 45 minutes for dinner, and 5 minutes for a snack for a total of 95 minutes each day. MassHealth approved 90 minutes for each day. The MassHealth nurse testified that 90 minutes is the standard of care for meal preparation for an individual who is totally dependent upon others to prepare meals. After the MassHealth representative testified, the appellant’s representative asked the appellant specific questions regarding her meals and the preparation involved. The appellant then requested her PCA to testify as well. The PCA testified that the 95 minutes requested was for breakfast, lunch, dinner, and a snack. (Testimony). The PCA testified that meal preparation was approximately 20-25 minutes per meal. (Testimony). The MassHealth representative pointed out that the total time for meal preparation, about which the PCA had testified, was still within the approved 90 minutes for meal preparation. (Testimony). In response, the PCA testified that preparation for dinner never took 20-25 minutes despite his prior testimony and that dinner preparation took ‘a good hour.’ (Testimony). No corroborating evidence was offered by the appellant to support this change in testimony. No resolution was reached by the parties on the issue of meal preparation.

Findings of Fact

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

1. The appellant is a MassHealth member who has received personal care services and lives in

the community. (Testimony and Exhibit 1)

2. The appellant's primary diagnosis is breast cancer, with relevant secondary diagnoses which include osteoarthritis, neuropathy, chronic pain, bulging discs as well as anxiety and post-traumatic stress among others. (Testimony and Exhibit 6, page 8)
3. The appellant's provider, Boston Center for Independent Living, a PCM agency, requested PCA services totaling 32 Hours and 15 minutes per week and 2 hours per night (Testimony and Exhibit 6)
4. MassHealth modified the requested PCA services and approved 30 hours and 45 minutes per week and 2 hours per night. (Testimony, Exhibit 1, and Exhibit 6)
5. Aid pending has been approved. (Exhibit 5)
6. MassHealth made 3 modifications to the Instrumental Activities of Daily Living (IADLs): meal preparation, laundry, and housekeeping. (Testimony and Exhibit 6, page 22-23).
7. After testimony, MassHealth rescinded the modification for laundry. (Testimony)
8. After testimony, MassHealth rescinded the modification for housekeeping. (Testimony)
9. The MassHealth nurse stated that 90 minutes is the standard of care for meal preparation for an individual who is totally dependent upon others to prepare their meals. (Testimony)
10. The appellant had her PCA testify and the PCA initially stated that meal preparation was approximately 20-25 minutes per meal. (Testimony)
11. The MassHealth representative noted that the time for meal preparation was still within the approved time of 90 minutes per day. (Testimony)
12. In response, the PCA amended his testimony to state that preparation for dinner never took 20-25 minutes despite his prior testimony, and that dinner preparation took 'a good hour.' (Testimony).

Analysis and Conclusions of Law

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(A) 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.

(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.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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;
- (3) bathing/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.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

- (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.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM 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 PCA 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.

MassHealth made modifications to appellant's prior authorization requests for the IADL's of meal preparation, laundry, and housekeeping. (Testimony, Exhibit 6, p.23-24). Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for: laundry (90 minutes, one time per week); and housekeeping (90 minutes, one time per week). As MassHealth agreed to adjust the decision and approve the time requested, the appeal associated with those tasks is DISMISSED. (130 CMR 610.051(B)).

Regarding meal preparation, MassHealth modified the requested 95 minutes each day, seven days a week, to 90 minutes each day, seven days a week. After MassHealth's presentation of testimony, the appellant called the PCA to testify regarding the meal preparation. The PCA testified that the 95 minutes requested was for breakfast, lunch, dinner, and a snack. (Testimony). The PCA testified that meal preparation was approximately 20-25 minutes per meal. (Testimony). The MassHealth representative pointed out that the total time for meal preparation about which the PCA testified was still within the approved 90 minutes for meal preparation. (Testimony). In response, the PCA amended his testimony, stating that preparation for dinner took 'a good hour.' (Testimony). No corroborating evidence was offered by the appellant to support this change in testimony.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). MassHealth's modifications are justified based upon MassHealth representative's testimony regarding the standard of care for meal preparation as well as the initial testimony of the appellant's PCA. The appellant provided no convincing evidence to corroborate the amended testimony to support that it takes longer than 20-25 minutes, 3 times daily for meal preparation,

including the additional 5 minutes a day for snack preparation that was requested. The disputed incidental activity of daily living was correctly calculated based upon the standards of care and the appellant's own initial evidence presented through the testimony of her PCA. The appellant has not shown the invalidity of MassHealth's determination, nor met her burden to do so. Therefore, the portion of the appeal seeking additional time beyond the MassHealth modification is DENIED.

Order for MassHealth

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

- laundry (90 minutes, one time a week); and
- housekeeping (90 minutes, one time a week).

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]