

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Dismissed in Part	Appeal Number:	2206015
Decision Date:	9/29/2022	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.
#226801



*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:	Prior Authorization
Decision Date:	9/29/2022	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 12, 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 August 10, 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 request for personal care services.

Summary of Evidence

The appellant is an adult who has a primary diagnosis of multiple sclerosis. The appellant has migraines, syncope, vertigo, anxiety, depression, post-traumatic stress disorder (PTSD), psychosis and heart problems. The appellant reports shortness of breath on exertion, neuropathy in the legs, neck pain, lower back pain, bilateral leg pain, bilateral knee pain and difficulty bending over. (Testimony; Exhibit 4). The appellant required an interpreter at hearing.

An initial evaluation for Personal Care Attendant (PCA) services was submitted to MassHealth. The appellant requested 16 day/evening hours each week and MassHealth modified this request and approved 13.5 day/evening hours each week. (Testimony; Exhibit 4). The appellant did not request any nighttime hours. (Testimony; Exhibit 4). The dates of service are July 12, 2022 through July 11, 2023. (Testimony; Exhibit 4). The overall evaluation was based on available documentation due to the COVID-19 Emergency and performed through a videoconference call.

MassHealth modified the time requested for quick wash, showering, meal preparation for lunch, meal preparation for dinner, and laundry services. (Testimony; Exhibit 4). Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for a quick wash (10 minutes each day), meal preparation for lunch (25 minutes each day), meal preparation for dinner (35 minutes each day), and laundry (60 minutes each week). (Testimony; Exhibit 4).

The only issue remaining was the time requested for showering. The appellant requested 20 minutes each day for showering. (Testimony; Exhibit 4). MassHealth modified this request and approved 15 minutes each day for showering. (Testimony; Exhibit 4). The MassHealth representative testified that this adjustment was based upon a review of a report from an occupational therapist (OT) who noted that the appellant required minimal assistance with bathing tasks including getting in and out of the tub as well as washing and drying off. (Testimony; Exhibit 4). The MassHealth representative testified that categorizing the level of assistance as minimal typically means that the individual can complete up to 75 percent of the task on their own. MassHealth restored the time for quick wash due to the appellant reporting issues of incontinence at hearing.

The appellant testified that she can complete some tasks associated with showering on her own but has difficulty in performing tasks while also trying to remain balanced and standing in the shower. The appellant does not have a

shower chair and would prefer to continue showering without equipment. The appellant testified that she also gets tired in performing tasks such as washing her hair and extremities. The appellant testified that she is unable to bend over to wash her legs. The appellant testified that while she does not want to have someone assisting her with tasks such as bathing, if they are there providing the help, she wants them to be paid appropriately. The appellant testified that it typically takes more than 20 minutes to complete a shower and the PCA provides more than minimal assistance.

The MassHealth representative responded that for safety and efficiency purposes, the appellant should talk to the personal care management (PCM) agency about obtaining equipment such as a shower chair. The MassHealth representative noted that the requiring assistance due to not wanting the equipment does not warrant the need for additional time for PCA services. Both parties acknowledged the appellant's incontinence and MassHealth determined that this condition warranted the time requested for a quick wash.

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 multiple sclerosis.
2. The appellant has migraines, syncope, vertigo, anxiety, depression, post-traumatic stress disorder (PTSD), psychosis and heart problems.
3. The appellant reports shortness of breath on exertion, neuropathy in the legs, neck pain, lower back pain, bilateral leg pain, bilateral knee pain and difficulty bending over.
4. The appellant required the use of an interpreter at the hearing.
5. An initial evaluation for Personal Care Attendant (PCA) services was submitted to MassHealth.
6. The overall evaluation was based on available documentation due to the COVID-19 Emergency and performed through a videoconference call.
7. The appellant requested 16 day/evening hours each week.
8. MassHealth modified the request and approved 13.5 day/evening hours

each week.

9. The appellant did not request any nighttime hours.
10. The dates of service are July 12, 2022 through July 11, 2023.
11. MassHealth modified the time requested for bathing, meal preparation for lunch, meal preparation for dinner, and laundry services.
12. Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for:
 - a quick wash (10 minutes each day);
 - meal preparation for lunch (25 minutes each day);
 - meal preparation for dinner (35 minutes each day), and
 - laundry (60 minutes each week).
13. The appellant requested 20 minutes each day for showering.
14. MassHealth approved 15 minutes each day for showering.
15. An occupational therapist (OT) noted that the appellant required minimal assistance with bathing tasks.
16. MassHealth restored the time for quick wash due to the appellant reporting issues of incontinence at hearing.
17. The appellant has difficulty in completing tasks associated with bathing while also trying to remain balanced and standing in the shower.
18. The appellant does not have a shower chair.
19. The appellant gets tired performing tasks such as washing her hair and extremities on her own.
20. The appellant is unable to bend down to wash her legs.
21. It typically takes more than 20 minutes to shower.

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 requirements 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:

- a quick wash (10 minutes each day);
- meal preparation for lunch (25 minutes each day);
- meal preparation for dinner (35 minutes each day), and
- laundry (60 minutes each week).

As MassHealth agreed to adjust their decision and approve the time for tasks noted above, the appeal associated with those tasks is dismissed. (130 CMR 610.051(B)). The parties agreed that the only issue that remained outstanding was the time requested for showering.

Activities of daily living include physically assisting a member with bathing, personal hygiene, or grooming. (130 CMR 422.410(A)(3)). Records presented and the appellant's testimony show the appellant requires the time requested for showering. While a report from an occupational therapist notes that the appellant requires minimal assistance with these tasks, MassHealth agreed to restore the time requested for a quick wash based on testimony regarding incontinence as well as the appellant likely requiring more than minimal assistance. Additionally, the appellant required interpreter services at the hearing and records show that the evaluation was done through a videoconference call. The appellant's limitations physically as well as a language barrier and the reliance on a videoconference call in making an assessment all lead to the conclusion that the evaluation process did not provide a comprehensive assessment. While MassHealth was correct in stating that the appellant should get a shower chair to make the task of showering easier and require less time for the PCA, the appellant's testimony about the overall process supports the request for 20 minutes. This part of the appeal is approved.

This appeal is dismissed in part and approved in part.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve the following as of July 12, 2022:

- a quick wash (10 minutes each day);
- showering (20 minutes each day);
- meal preparation for lunch (25 minutes each day);
- meal preparation for dinner (35 minutes each day), and
- laundry (60 minutes each 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

CC:

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