

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208129
Decision Date:	1/11/2023	Hearing Date:	12/08/2022
Hearing Officer:	Alexis Demirjian		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Mary Jo Elliot, RN – Clinical Reviewer

Interpreter:

Carlos



*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:	Denied	Issue:	PCA Hours
Decision Date:	1/11/2023	Hearing Date:	12/08/2022
MassHealth's Rep.:	Mary Jo Elliot, RN	Appellant's Rep.:	Pro se
Hearing Location:	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 October 10, 2022, MassHealth approved the Appellant's pre-authorization for Personal Care Attendant ("PCA") hours in the amount of 6 hours and 45 minutes. (see 130 CMR 450.303 and Exhibit 3). The Appellant filed this appeal in a timely manner on October 19, 2022 (see 130 CMR 610.015(B) and Exhibit 2). MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations) are valid grounds for appeal (see 130 CMR 610.032 (5)).

Action Taken by MassHealth

MassHealth approved the Appellant's prior authorization request for PCA hours in the amount of 6 hours 45 minutes per week.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303, in determining that the Appellant was entitled to 6 hours and 45 minutes a week of PCA time.

Summary of Evidence

The Appellant is a MassHealth member over the age of 55 with a primary diagnosis of osteoarthritis, poor circulation, and vertigo. (See Exhibit 4, p. 11 and Testimony).

The MassHealth representative testified that a request for services was placed for the Appellant by his provider, AgeSpan. (See Exhibit 4 and Testimony). The prior authorization request for PCA services requested 6 hours and 45 minutes of day/evening hours per week for dates of service of October 11, 2022, through October 10, 2023. (Id.). The prior authorization was approved in full, without any modifications. (See Exhibit 2, Exhibit 4, and Testimony).

Each task prior authorization request is described fully below:

Bathing

The services requested included physical assistance of bathing activities. The time requested for that activity was 15 minutes, one time a day, 7 days a week, totaling the amount of PCA hours for this activity at 105 total minutes.

Task	Mins/Ep	Eps/Day	Days/Week	Total Mins/Wk
Bathing	15	1	7	105 minutes/week

(See Exhibit 4, p. 15 and Testimony)

MassHealth approved the requested 105 total minutes requested for these tasks. (Id.)

Grooming

Additionally, it was also requested that the Appellant receive PCA time to assist in grooming activities. Those tasks and the requested episodes, episodes per day and days per week are listed in the table below:

Task	Mins/Ep	Eps/Day	Days/Week	Total Mins/Wk
Nail Care	5	1	1	5 minutes/week
Shaving	5	1	1	5 minutes/week
Other (application of lotion)	5	1	7	35 minutes/week

The total minutes requested by the Appellant's provider for Grooming tasks was 45 minutes per week for the above-described tasks. (See Exhibit 4, p. 16, 17 and Testimony)

MassHealth approved the prior authorization request for 45 minutes for completion of Grooming tasks by the PCA. (Id.)

Dressing and Undressing

For the activities of Dressing/Undressing the Appellant's provider requested the following:

Task	Mins/Ep	Eps/Day	Days/Week	Total Mins/Wk
Dressing – assist lower extremity dressing	5	1	7	35 minutes/week
Undressing – physical assist with lower extremity undressing	4	1	7	28 minutes/week

The total minutes requested by the Appellant's provider for Dressing and Undressing tasks was 63 minutes per week. (See Exhibit 4, p. 18 and Testimony).

MassHealth approved the prior authorization request for 63 minutes for completion of Dressing/Undressing tasks by the PCA. (Id.).

Meal Preparation

For activities related to meal preparation the Appellant's provider requested the following:

Tasks	Mins/Ep	Days/Wk	Total Mins/Wk
Breakfast	15	1	15
Lunch	10	1	10
Dinner	20	1	20

The total minutes requested by the Appellant's provider for meal preparation tasks was 45 minutes per week. (See Exhibit 4, p. 25 and Testimony).

MassHealth approved the prior authorization request for 45 minutes for completion of meal preparation tasks by the PCA. (Id.).

Laundry

For the task of laundry, the total amount of minutes requested by the Appellant's provider was 45 minutes per week. (See Exhibit 4, p. 26 and Testimony).

MassHealth approved the prior authorization request for 45 minutes per week for the completion of

laundry tasks by the PCA. (Id.).

Housekeeping

For tasks related to housekeeping, the total number of minutes requested by the Appellant's provider was 45 minutes per week. (See Exhibit 4, p. 26 and Testimony).

MassHealth approved the prior authorization request for 45 minutes per week for the completion of housekeeping tasks by the PCA. (Id.)

Shopping

For tasks of shopping, the total number of minutes requested by the Appellant's provider was 45 minutes per week. (See Exhibit 4, p. 26 and Testimony)

MassHealth approved the prior authorization request for 45 minutes per week for the completion of shopping tasks. (Id.)

Medical Transportation

For medical transportation, the Appellant's provider requested PCA assistance with transportation for 30 minutes per visit, based on 4 visits per year, totaling 120 minutes per year. This amounts to 2 minutes per week of PCA time for this task. (See Exhibit 4, p. 27 and Testimony)

Thus, MassHealth approved the 120 minutes per year as requested by the Appellant's provider. (Id.)

The total amount of time approved by MassHealth was 6 hours and 45 minutes per week. (See Exhibit 2, Exhibit 4 and Testimony). MassHealth testified that they may only consider the hours requested by the Appellant's provider in determining the amount of time to approve for PCA services. MassHealth further testified that if the Appellant's needs have changed and there is need for additional services the Appellant should submit a new prior authorization and those services may be evaluated for approval. (Testimony)

The Appellant's argued that despite fact that the requested services were approved in full, he would like his PCA to receive 20 hours of time. (Testimony) The Appellant focused on the need for transportation for doctor's visits and for the PCA to drive him. (Id.)

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 55 with a primary diagnosis of osteoarthritis, poor circulation, and vertigo. (Testimony and Exhibit 4, p. 11).
2. MassHealth received a prior authorization request for PCA services requesting 6 hours and 45 minutes of day/evening hours per week and 2 for dates of service of October 11, 2022, through October 10, 2023. (Testimony and Exhibit 4, p. 2).
3. The prior authorization requested 105 minutes per week for the PCA assisted task of bathing. (See Exhibit 4, p. 15 and Testimony).
4. MassHealth approved the prior authorization for 105 minutes per week for the PCA assisted task of bathing. (Id.).
5. The prior authorization requested 45 minutes per week for PCA assisted grooming tasks. (See Exhibit 4, p. 16, 17 and Testimony).
6. MassHealth approved the prior authorization for 45 minutes for PCA assisted grooming tasks. (Id.).
7. The prior authorization requested 63 minutes per week for PCA assistance with the task of dressing and undressing. (See Exhibit 4, p. 18 and Testimony).
8. MassHealth approved the prior authorization for 63 minutes per week for PCA assistance with the task of dressing and undressing. (Id.).
9. The prior authorization requested 45 minutes per week with PCA assistance with the task of meal preparation. (See Exhibit 4, p. 25 and Testimony).
10. MassHealth approved the prior authorization for 45 minutes per week with PCA assistance with the task of meal preparation. (Id.).
11. The prior authorization requested 45 minutes per week for PCA assistance for the task of laundry. (See Exhibit 4, p. 26 and Testimony).
12. MassHealth approved the prior authorization for 45 minutes per week for PCA assistance with the task of laundry. (Id.).
13. The prior authorization requested 45 minutes per week for the PCA assistance with the task of shopping. (See Exhibit 4, p. 26 and Testimony).
14. MassHealth approved the prior authorization for 45 minutes per week for PCA assistance with the task of shopping. (Id.).

15. The prior authorization requested 30 minutes, 4 times per year for PCA assistance with transportation to medical appointments, totaling 120 minutes per year or 2 minutes per week. (See Exhibit 4, p. 27 and Testimony).

16. MassHealth approved the prior authorization for 120 minutes per year, which amounts to 2 minutes per week. (Id.).

17. In total MassHealth fully approved the Appellant's prior authorization for 395 minutes per week, or 6 hours 45 minutes per week. (See Exhibit 2 and Exhibit 4).

18. MassHealth did not deny or modify the Appellant's prior authorization. (See Exhibit 2, Exhibit 4, and Testimony).

19. The Appellant's provider did not request 20 hours of PCA time. (See Exhibit 4 and Testimony).

Analysis and Conclusions of Law

Pursuant to 130 CMR 403 (C), MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

MassHealth regulations define Activities of Daily Living (ADL's) under 130 CMR 422.410(A), and 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 or 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.

MassHealth defines Instrumental Activities of Daily Living (IADL) under 130 CMR 422.410(B). They are defined as follows:

- (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.

The requested services must be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. MassHealth regulation, 130 CMR 450.204 provides that 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

Further, pursuant to 130 CMR 450.204 (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.

Pursuant to 130 CMR 422.412, MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician,

- pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
 - (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
 - (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
 - (F) services provided by family members, as defined in 130 CMR 422.402;
 - (G) surrogates, as defined in 130 CMR 422.402; or
 - (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency. 422.413: Payment for PCA Services.

The evidence does not support a finding that MassHealth erred in approving the Appellant's prior authorization for 6 hours and 45 minutes for PCA time because that is the entirety of the time that was requested by his provider. MassHealth does not pay for services that are not medically necessary. The record in this matter does not include any evidence or testimony that demonstrates that an additional 13 hours and 15 minutes of PCA time is medically necessary consistent with the rules and regulations for approving services.

As noted during the hearing, if the Appellant's circumstances have changed, he should have AgeSpan submit a new request for prior authorization for specific services and include documentary evidence to support the medical necessity of those requested services.

For this reason, the Appellant has not shown that the additional hours he seeks are medically necessary. Accordingly, the Appellant's request for restoration of the bathing/shower time is DENIED.

Order for MassHealth

None.

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.

Alexis Demirjian

Hearing Officer
Board of Hearings

cc:

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