

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Dismissed in part

Appeal Number: 2208912

Decision Date: 3/16/2023

Hearing Date: 02/09/2023

Hearing Officer: Thomas Doyle

Record Open to:

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, R.N. (Appeals Nurse and
Clinical Reviewer from OPTUM)

Interpreter:



*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:	PA-PCA Services
Decision Date:	3/16/2023	Hearing Date:	02/09/2023
MassHealth's Rep.:	Mary Jo Elliot	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 November 3, 2022, MassHealth modified the appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services from the requested 33 hours, 0 minutes of day/evening PCA assistance per week, to 30 hours, 15 minutes of day/evening PCA assistance per week (Ex.1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on November 30, 2022 (130 CMR 610.015; Ex. 2). Modification of a PA request is valid grounds for appeal to BOH (130 CMR 610.032).¹

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant's prior authorization request for personal care attendant services.

¹ The PCM agency also requested, and MassHealth authorized, 2 nighttime hours of PCA services for the appellant, every night.

Summary of Evidence

The appellant was represented by [REDACTED]. Appellant appeared with her son and both testified at the hearing by telephone. MassHealth was represented by an R.N., who testified to the following: appellant is a female in her mid-50's with a primary diagnosis of obesity with complications. (Testimony; Ex. 4, p. 8). Currently, there is aid pending. On or about October 7, 2022 the provider, Stavros Center for Independent Living, submitted a re-evaluation request for 33 hours and 0 minutes per week for day/evening and 2 hours per night. On March 21, 2022, MassHealth modified the request to 30 hours and 15 minutes per week and agreed with the 2 hours per night.

There were three modifications. MassHealth modified Assistance with Medications, physical assist with prefilling med box from 5 minutes an episode, 1 time a day, 7 days a week to 0; MassHealth modified physical assist with medications from 2 minutes an episode, 2 times a day, 7 days a week to 0. MassHealth modified Meal Preparation. Appellant requested 15 minutes for breakfast and MassHealth approved that amount of time. Appellant requested 30 minutes for lunch. MassHealth modified that to 25 minutes. Appellant requested 45 minutes for dinner and MassHealth modified that to 35 minutes. MassHealth had modified Laundry to 60 minutes a day but after hearing testimony from the PCA, agreed to 90 minutes a day for laundry.

Appellant stated she is on a low sodium diet. She wears a brace on her hand and suffers from arthritis. The PCA, who is also appellant's son, receives appellant's medications from the pharmacy in the bottles and does not use a pill box. Appellant testified she knows her medications but sometime becomes confused and dizzy. She takes her medications every day, twice a day.

Findings of Fact

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

1. The appellant is a female MassHealth member in her mid-50's who lives in the community. (Testimony; Ex. 4, p. 1, 3).
2. The appellant's medical diagnoses include morbid obesity with complications; bursitis; knee replacement; osteoarthritis; diabetes; incontinence of urine. (Ex. 4, p. 8-9; Ex. 5; Testimony).
3. STAVROS, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf on or about October 7, 2022, seeking 33 hours, 0 minutes of PCA assistance per week (day/evening hours), and 2 nighttime hours per night. (Testimony; Ex. 4, p. 10-26).
4. MassHealth modified the requested time to 30 hours, 15 minutes of day/evening PCA assistance per week and approved 2 nighttime hours every night for services for one year. (Testimony; Ex. 1; Ex. 4, p. 10-26).
5. There is aid pending. (Ex. 2; Ex. 8).

6. MassHealth modified assist with medications, meal preparation and laundry. (Testimony; Ex. 4).
7. MassHealth rescinded its modification on laundry and the parties agreed to 90 minutes a week. (Testimony).
8. Appellant suffers from arthritis and wears a brace on her left hand. (Testimony).
9. The PCA does not prefill a medicine box. (Testimony).
10. Appellant is on a low sodium diet. (Testimony).

Analysis and Conclusions of Law

Appellant disagreed with the medically necessary decision of MassHealth in modifying her hours for PCA services. The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

PCA 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. (**Emphasis added**).

(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. (**Emphasis added**).

422.403: Eligible Members

...

(C) MassHealth covers PCA 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 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)**. (**Emphasis added**).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

MassHealth made modifications to appellant's prior authorization requests for the ADL of assistance with medications and modifications to appellant's IADL's of meal preparation and laundry. (Ex. 4, pp. 18-19, 22-23; Testimony).

Laundry:

Appellant requested 90 minutes a week for laundry. (Ex. 4, p. 23). MassHealth approved 60 minutes a week. (Id.). The MassHealth nurse said the evaluation stated laundry was done in home, therefore only 60 minutes a week could be approved. Appellant's son, who is also her PCA, testified he does not do laundry on site; he does laundry two to three times a week because of appellant's urine incontinence. The PCA testified the evaluating nurse never spoke to him. After this testimony, MassHealth agreed to 90 minutes a week for laundry. Therefore, this part of the appeal is dismissed.

Assistance with Medications:

Appellant requested PCA time for physical assist with prefilling medicine box at 5 minutes an episode, 1 time a day, 1 day a week. (Testimony; Ex. 4, p. 18-19). Regarding physical assist with medications, appellant requested 2 minutes an episode, 2 times a day, 7 days a week. (Testimony; Ex. 4, pp 18-19). MassHealth approved 0 time for both tasks.

Prefilling Med Box: Appellant's PCA testified he gets appellant's medication in bottles from the pharmacy and places them on a table. He does not use or put the medicine in a pill box. (Testimony). Since the PCA does not prefill a medicine box, requested time for this task is dismissed.

Physical Assist with Medications: Appellant requested 2 minutes an episode, 2 times a day, 7 days a week. MassHealth modified this to 0 time for this task. (Ex. 4, pp. 18-19). The evaluation stated this request was to bring medications and water to appellant at the appropriate times to ensure proper compliance. (Ex. 4, p. 18). The MassHealth nurse testified that this request was denied because appellant was alert and oriented and the evaluation does not state appellant is unable to take her medication herself. She further testified that the PCA is not there to give medicine and if appellant cannot direct her own care, she would need a surrogate. Appellant testified she takes her medications every day, twice a day and she "knows" her medication. (Testimony). Testimony by the appeal representative and appellant reflects that appellant's medications can make her dizzy and disoriented and she is unable to open her pill bottles due to arthritis in her hands. The PCA ensures the correct medications are taken at the correct time. This dizziness and loss of orientation is confirmed in a letter from one of appellant's doctors. (Ex. 7). Appellant has shown a medical necessity for her PCA to physically assist her with taking her medications. The medications she takes can make her dizzy and less oriented. The arthritis in her hands prevents appellant from opening her bottles to obtain her medicine. Appellant's request for physical assist with medications is approved for time requested, 2 minutes an episode, 2 times a day, 7 days a week.

Meal Preparation:

Appellant requested 15 minutes for breakfast, 7 days a week; she requested 30 minutes for lunch, 7 days a week; she requested 45 minutes for dinner, 7 days a week. (Ex. 4, p. 22). MassHealth

approved the requested 15 minutes for breakfast, 7 days a week. (Testimony). MassHealth approved 25 minutes for lunch, 7 days a week; MassHealth approved 35 minutes for dinner, 7 days a week. (Testimony).

Breakfast: Appellant requested 15 minutes a day for breakfast. MassHealth approved this requested time. Therefore, as this task has not been modified, this part of the appeal is dismissed.

Lunch and Dinner: Appellant requested 30 minutes for lunch and 45 minutes for dinner. MassHealth modified the time for lunch to 25 minutes and the time for dinner to 35 minutes. Appellant has a diagnosis of morbid obesity. (Ex. 5). Her PCA testified she is on a low sodium diet and the evidence shows appellant suffer from diabetes. (Ex. 5). The PCA testified appellant has fresh rice and beans every day. He uses fresh vegetables and fruit everyday that need chopping to prepare for consumption. Because of her documented medical conditions and testimony of her dietary requirements to ensure proper and appropriate nutrition to not aggravate those medical conditions, appellant has shown a medically necessity for 30 minutes for lunch, 7 days a week and 45 minutes for dinner, 7 days a week. Appellant's requested time for lunch and dinner is approved.

Based on the above, the appeal is APPROVED IN PART and DISMISSED IN PART.

Order for MassHealth

- Rescind aid pending
- Adjust the approved PCA time in accordance with this decision:

Meal Preparation – 30 minutes for lunch, 45 minutes for dinner, each 7 days a week. MassHealth approved 15 minutes requested for breakfast, 7 days a week, therefore, this part of the appeal is dismissed.²

Assistance with Medications –

Physical Assist with Medications: 2 minutes an episode, 2 times a day, 7 days a week.

Physical Assist with Prefilling Med Box: This is dismissed as the PCA testified he did not use a pill box.

Laundry – The PCA testified that laundry is not done on site. MassHealth agreed to the 90 minutes a week. Therefore, this part of the appeal is dismissed.

- Send notice to appellant, her appeal representative and her PCA provider of the new amount of approved time in writing.

² The hearing officer has no authority to authorize more PCA assistance time than amounts requested by the PCM agency.

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]