

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2209247

Decision Date: 4/11/2023

Hearing Date: 02/14/2023

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN, Optum



*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:	Personal Care Attendant Services
Decision Date:	4/11/2023	Hearing Date:	02/14/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Pro se with PCA
Hearing Location:	Quincy Harbor South	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction¹

Through a notice dated 10/10/2022, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 80:30 day/evening hours per week plus two daily night time attendant hours to 66:45 day/evening hours per week plus 2 daily night time attendant hours for dates of service from 10/12/2022 to 12/14/2022 (130 CMR 422.410; Exhibit 1). A timely appeal was filed by the appellant on 12/15/2022 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request for PCA services was received on appellant's behalf on 09/22/2022 from her PCA provider, UCP Metro Boston (Provider) and is a re-evaluation request for the dates of service of 10/12/2022 to 10/11/2023. In the prior authorization request for PCA services, the provider requested 80:30² day/evening hours per week plus two daily nighttime attendant hours.

The appellant is 66 years of age and she lives independently. The primary diagnosis affecting her ability to function independently is Scheuermann's Kyphosis (Exhibit 4).

The Optum representative testified that MassHealth modified the PCA request to 66:45 day/evening hours per week. MassHealth approved the nighttime attendant hours as requested. MassHealth modified the request for PCA services in the Activities of Daily Living (ADL) tasks of grooming, dressing, undressing and wound care and in the Instrumental Activity of Daily Living (IADL) task of equipment maintenance (Exhibits 1 and 4).

Grooming (Applying Lotion)

The appellant's PCA provider requested 12 minutes, 1 time per day, 7 times per week (12 X 1 X 7)³ for PCA assistance with applying lotion to the appellant's body. The provider noted that the PCA is necessary to provide maximum assistance with applying lotion.

MassHealth modified the request for assistance with application of lotion to 5 X 1 X 7. The MassHealth representative testified that the time requested was excessive based on the appellant's documented needs.

² PCA time is referred to in this format, 32:30, to signify 32 hours and 30 minutes.

³ PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

The appellant testified with the assistance of her PCA that she needs lotion on her skin two to three times per day, over her entire body. Because of her condition, her skin “comes off in sheets.” She states she never timed how long the PCA takes to assist her with this task; however, it takes “a lot of time.” She is able to apply the lotion to her own arms up to her elbows, and her knees and thighs, but the PCA must assist with all other body parts.

Dressing/Undressing

The appellant’s PCA provider requested 25 X 1 X 7 and 15 X 1 X 7 for dressing and 15 X 1 X 7 for undressing. The provider noted that the appellant needs assistance with dressing and undressing due to her physical limitations, especially poor balance, weakness, and notable joint pain. She requires at least moderate assistance with all aspects dressing/undressing. She does choose her attire. The PCA time was requested for dressing for a full change of clothing every day and for a partial change of clothing at least one time in the afternoon.

MassHealth modified the request for dressing to 15 X 1 X 7 (one instance per day) and for undressing to 7 X 1 X 7. The MassHealth representative testified that the time requested is excessive due to the appellant’s documented needs.

The appellant testified that she needs to be dressed twice a day – the first time in the morning and a second time in the afternoon to be partially dressed. She testified that she has bowel accidents that cause the need for her to be dressed twice. She also testified that she needs the time requested.

After hearing the appellant’s testimony, the MassHealth representative approved the time requested for undressing; however, she stated that any clothing changes due to incontinence are requested and approved under the task of toileting.

Wound Care

The appellant’s provider requested 30 X 2 X 7 for assistance with the appellant’s wound care. The appellant has a bedsore on her coccyx and the wound needs to be packed with dressing and normal saline. The provider noted that the PCA is utilized to remove old dressing, cleanse the wound, cleanse the intact skin with alcohol wipes, pack the wound with dressing and wipe around the wound with “skin integrity” product. The PCA uses a y 9" x 9" sterile dressing and seals the site.

MassHealth initially denied the time requested for assistance with wound care. The MassHealth representative testified that a PCA is a non-specialized health care provider who would be approved to perform simple wound care, but not packing of the wound. Upon hearing the testimony of the appellant, the MassHealth representative approved 15 X 1 X 7 for assistance with the wound care.

The appellant agreed that 15 X 1 X 7 for wound care would meet her needs.

Equipment Maintenance

The appellant's PCA provider requested on her behalf 140 X 1 X 1 for assistance with equipment maintenance. The provider noted that time is requested in this area for the PCA to clean and maintain 5 items needed for her safe care: one hospital bed with alternating air pressure mattress: - cleans and wipes down bed and mattress - checks integrity of bed, bedrails, adjustments, mattress - checks for stability; hospital bed with alternating air pressure mattress - 5 mins/day x 7/days/week = 35/mins/week. One travel wheelchair: - cleans and wipes down - checks all wheels, brakes and controls - checks footrests - checks seating and joints - checks for stability. Travel Wheelchair – 3 mins/day x 7/days/week = 21/mins/week. One rollator walker: - cleans and wipes down – checks all wheels, glides, brakes and controls – checks seating, joints and frame - checks for stability. Rollator walker - 4 mins/day x 7/days/week = 28/mins/week. One Shower Chair: - wipes down - checks seating, joints and frame - checks integrity of frame - checks for stability Shower Chair – 3 mins/day x 7/days/week = 21 mins/week. One bedside commode: - empties and rinses bucket - wipes down - checks seating, joints and frame - checks integrity of frame - checks for stability. Bedside Commode - 5 mins/day x 7/days/week = 35 mins/week. Total for 5 items 140 mins/week.

MassHealth modified the request for assistance with equipment maintenance to 70 X 1 X 1. The MassHealth representative testified that last year the appellant was approved for 35 minutes per week for this task. The documentation does not show that the appellant requires more than 70 minutes per week for this task.

The appellant testified that she now requires oxygen and that equipment needs to be maintained.

Findings of Fact

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 09/22/2022 from her PCA provider, UCP Metro Boston, Inc., and is a re-evaluation request for the dates of service of 10/12/2022 to 10/11/2023 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 80:30 day/evening hours of assistance per week plus two daily nighttime attendant hours (Testimony; Exhibit 4).
3. The appellant is an adult who lives with independently. The primary diagnosis

affecting her ability to function independently is Scheuermann's Kyphosis (Testimony; Exhibit 5).

4. On 10/10/2022, MassHealth modified the PCA request to 66:45 day/evening hours per week. Nighttime attendant hours were approved as requested (Testimony; Exhibits 1 and 4).
5. A timely appeal was filed on the appellant's request on 12/14/2022 (Exhibit 2).
6. A fair hearing took place on 02/14/2023 (Exhibit 3).
7. In the area of grooming (applying lotion), the appellant's PCA provider requested 12 minutes, 1 time per day, 7 times per week (12 X 1 X 7)⁴ for PCA assistance with applying lotion to the appellant's body. The provider noted that the PCA is necessary to provide maximum assistance with applying lotion. (Testimony; Exhibits 1 and 4).
8. MassHealth modified the request for assistance with applying lotion to 5 X 1 X 7 (Testimony; Exhibits 1 and 4).
9. The appellant "never timed" the PCA when she was applying lotion to her skin. The appellant is able to apply lotion to herself up to her elbows, to her thighs and to her abdomen (Testimony).
10. The appellant's PCA provider requested 25 X 1 X 7 and 15 X 1 X 7 for assistance with dressing and 15 X 1 X 7 for assistance with undressing. The provider noted that the appellant needs assistance with dressing and undressing due to her physical limitations, especially poor balance, weakness, and notable joint pain. She requires at least moderate assistance with all aspects dressing/undressing. She does choose her attire. The PCA time was requested for dressing for a full change of clothing every day and for a partial change of clothing at least one time in the afternoon (Testimony; Exhibit 4).
11. Assistance for changing clothing as a result of an incontinence accident is included with the task of "toileting." The appellant's request for PCA assistance with changing clothes after an accident was approved in full (Testimony).
12. MassHealth modified the request for assistance with dressing to 15 X 1 X 7 (Testimony; Exhibit 4).
13. MassHealth initially modified the request for undressing to 7 X 1 X 7; however, at the fair hearing, the MassHealth representative restored all time requested for

⁴ PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

assistance with undressing (15 X 1 X 7). MassHealth stood by its modification in the area of dressing (15 X 1 X 7) (Testimony).

14. The appellant's provider requested 30 X 2 X 7 for assistance with the appellant's wound care. The appellant has a bedsore on her coccyx and the wound needs to be packed with dressing and normal saline. The provider noted that the PCA is utilized to remove old dressing, cleanse the wound, cleanse the intact skin with alcohol wipes, pack the wound with dressing and wipe around the wound with "skin integrity" product. The PCA uses a 9" x 9" sterile dressing and seals the site. (Testimony).
15. MassHealth initially denied the request for assistance with wound care; however, at the hearing, MassHealth modified the request to 15 X 1 X 7 (Testimony; Exhibits 1 and 4).
16. MassHealth testified that a PCA is not authorized to "pack a wound," only to assist with simple wound care (Testimony).
17. The appellant agreed that 15 X 1 X 7 of PCA time would meet her needs for assistance with wound care (Testimony).
18. The appellant's PCA provider requested on her behalf 140 X 1 X 1 for assistance with equipment maintenance. The provider noted that time is requested in this area for the PCA to "clean and maintain 5 items needed for her safe care: one hospital bed with alternating air pressure mattress: - cleans and wipes down bed and mattress - checks integrity of bed, bedrails, adjustments, mattress - checks for stability; hospital bed with alternating air pressure mattress - 5 mins/day x 7/days/week = 35/mins/week. One travel wheelchair: - cleans and wipes down - checks all wheels, brakes and controls - checks footrests - checks seating and joints - checks for stability. Travel Wheelchair – 3 mins/day x 7/days/week = 21/mins/week. One rollator walker: - cleans and wipes down – checks all wheels, glides, brakes and controls – checks seating, joints and frame - checks for stability. Rollator walker - 4 mins/day x 7/days/week = 28/mins/week. One Shower Chair: - wipes down - checks seating, joints and frame - checks integrity of frame - checks for stability Shower Chair – 3 mins/day x 7/days/week = 21 mins/week. One bedside commode: - empties and rinses bucket - wipes down - checks seating, joints and frame - checks integrity of frame - checks for stability. Bedside commode - 5 mins/day x 7/days/week = 35 mins/week. Total for 5 items 140 mins/week" (Testimony; Exhibit 4).
19. MassHealth modified the request for assistance with equipment maintenance to 70 minutes per week (Testimony; Exhibits 1 and 4).
20. During last year's PCA period, the appellant was approved for 35 minutes per week for assistance with equipment maintenance (Testimony).

21. Since last year, the appellant now uses an oxygen machine, which requires maintenance (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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.

(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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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;

(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; or
- (G) surrogates, as defined in 130 CMR 422.402.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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 (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

- (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 personal care 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 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.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *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 made modifications to the appellant's request for PCA services submitted on 09/22/2022 from her PCA provider, UCP Metro Boston, Inc. The request is a re-evaluation for dates of service from 10/12/2022 to 10/11/2023. In the prior authorization request for

PCA services, the provider requested 80:30 day/evening hours per week plus two daily nighttime attendant hours. The appellant is an adult woman who lives independently. The primary diagnosis affecting her ability to function independently is Scheuermann's Kyphosis.

MassHealth modified the PCA request to 66:45 day/evening hours per week. Nighttime attendant hours were approved as requested. MassHealth modified the request for PCA services in the Activities of Daily Living (ADL) tasks of grooming, dressing, undressing and wound care and in the Instrumental Activity of Daily Living (IADL) task of equipment maintenance.

Grooming (Applying Lotion)

In the area of grooming (applying lotion), the appellant's PCA provider requested 12 minutes, 1 time per day, 7 times per week (12 X 1 X 7) for PCA assistance with applying lotion to the appellant's body. The provider noted that the PCA is necessary to provide maximum assistance with applying lotion. MassHealth modified the request for assistance with applying lotion to 5 X 1 X 7. The MassHealth representative explained that the appellant should be able to participate, based on the documented physical abilities. The appellant. The appellant "never timed" the PCA when she was applying lotion to her skin. The appellant is able to apply lotion to herself up to her elbows, to her thighs and to her abdomen. She needs assistance with the remaining parts of her body. Because the appellant was not able to provide specific evidence that MassHealth's modification was incorrect, MassHealth's decision is supported by the relevant facts and regulations. This portion of the appeal is denied.

Dressing/Undressing

The appellant's PCA provider requested 25 X 1 X 7 and 15 X 1 X 7 for assistance with dressing and 15 X 1 X 7 for assistance with undressing. The provider noted that the appellant needs assistance with dressing and undressing due to her physical limitations, especially poor balance, weakness, and notable joint pain. She requires at least moderate assistance with all aspects dressing/undressing. She does choose her attire. The PCA time was requested for dressing for a full change of clothing every day and for a partial change of clothing at least one time in the afternoon. The appellant testified that the second partial dressing time is for a clothing change after incontinence accidents.

MassHealth modified the request for dressing to 15 X 1 X 7. The time for a partial second clothing change was approved under the task of toileting. MassHealth's decision is supported by the facts in the hearing record as well as the above regulations. This portion of the appeal is denied.

MassHealth restored all time requested for assistance with undressing (15 X 1 X 7). This portion of the appeal is therefore dismissed.

Wound Care

The appellant's provider requested 30 X 2 X 7 for assistance with the appellant's wound care. The appellant has a bedsore on her coccyx and the wound needs to be packed with dressing and normal saline. The provider noted that the PCA is utilized to remove old dressing, cleanse the wound, cleanse the intact skin with alcohol wipes, pack the wound with dressing and wipe around the wound with "skin integrity" product. The PCA uses a 9" x 9" sterile dressing and seals the site.

MassHealth initially denied the request for assistance with wound care; however, at the hearing, MassHealth modified the request to 15 X 1 X 7. MassHealth testified that a PCA is not authorized to "pack a wound," only to assist with simple wound care. The appellant agreed that 15 X 1 X 7 of PCA time would meet her needs for assistance with wound care. This portion of the appeal is therefore denied.

Equipment Maintenance

The appellant's PCA provider requested on her behalf 140 X 1 X 1 for assistance with equipment maintenance. The provider noted that time is requested in this area for the PCA to "clean and maintain 5 items needed for her safe care: one hospital bed with alternating air pressure mattress: - cleans and wipes down bed and mattress - checks integrity of bed, bedrails, adjustments, mattress - checks for stability; hospital bed with alternating air pressure mattress - 5 mins/day x 7/days/week = 35/mins/week. One travel wheelchair: - cleans and wipes down - checks all wheels, brakes and controls - checks footrests - checks seating and joints - checks for stability. Travel wheelchair – 3 mins/day x 7/days/week = 21/mins/week. One rollator walker: - cleans and wipes down – checks all wheels, glides, brakes and controls – checks seating, joints and frame - checks for stability. Rollator walker - 4 mins/day x 7/days/week = 28/mins/week. One shower chair: - wipes down - checks seating, joints and frame - checks integrity of frame - checks for stability shower chair – 3 mins/day x 7/days/week = 21 mins/week. One bedside commode: - empties and rinses bucket - wipes down - checks seating, joints and frame - checks integrity of frame - checks for stability. Bedside commode - 5 mins/day x 7/days/week = 35 mins/week. Total for 5 items 140 mins/week."

MassHealth modified the request for assistance with equipment maintenance, basing its decision on the fact that the appellant was approved for 35 minutes per week for assistance with this task. The only new equipment that requires maintenance is an oxygen machine. Since additional time was approved this year for this task, MassHealth's modification is supported by the relevant facts and the above regulations. This portion of the appeal is therefore denied.

For the foregoing reasons, this appeal is dismissed in part, and denied in part.

Order for MassHealth

For dates of service from 10/12/2022 to 10/11/2023, approve 15 X 1 X 7 for assistance with undressing, and 15 X 1 X 7 for assistance with wound care. With regard to other modifications, none.

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, Division of Medical Assistance, at the address on the first page of this decision.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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