

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2300525
Decision Date:	4/18/2023	Hearing Date:	03/03/2023
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

 (Daughter)

Appearance for MassHealth:

Mary-Jo Elliott, RN



*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:	Prior Authroization - PCA
Decision Date:	4/18/2023	Hearing Date:	03/03/2023
MassHealth's Rep.:	Mary-jo Elliott, RN	Appellant's Rep.:	Daughter
Hearing Location:	Quincy	Aid Pending:	Yes

Authority

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

Jurisdiction

Through notice dated January 12, 2023, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed for this appeal in a timely manner on January 20, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. MassHealth was represented by a Registered Nurse and clinical appeals reviewer who submitted a packet of documentation concerning the subject prior authorization request including the current PCA evaluation (collectively, Exhibit B). Appellant was represented by her daughter who did not file any documentation other than the Fair Hearing Request (Exhibit A).

The MassHealth representative testified that Appellant's provider agency submitted a written prior re-authorization request seeking 48.5 hours per week and 2 overnight hours of PCA services. MassHealth modified the request approving 44.75 hours per week and 2 overnight hours.

According to the written request, Appellant is an elderly female, legally blind since birth, afflicted with degenerative joint disease causing pain in hands, knees, feet, all joints; fibromyalgia; migraine headaches three times per month; tendinitis of shoulders; gastritis; sinus infection; chronic allergic rhinitis and hypoglycemia. Appellant reported a history of hypothyroidism (2012); basal cell carcinoma (2020) and hypoglycemia (2017). Appellant was noted to have poor fine-motor skills, generalized weakness, and compressed discs in L5 area.

Appellant resides in a single-level living space with laundry in the apartment. Appellant is reported to be weak due to back and joint pain. The request states Appellant is in need of assistance with transfers along with contact guard for mobility and safety. Appellant and her daughter reported that Appellant had one fall this year where she fainted in the hallway. Appellant denied having any ER visits or hospitalizations over the past year.

Appellant has a new diagnosis of high blood pressure along with the addition of the medication, lisinopril. Appellant now experiences leg swelling requiring the use of TED stockings. Appellant reported doing well with her current level of care with additional time needed for transport due to additional MD appointments for dermatology and vascular issues.

The MassHealth representative testified that MassHealth approved all of the time requested for assistance except in three areas: Range of Motion (ROM); toileting/bowel care and meal preparation. After the parties exchanged testimony, MassHealth agreed to restore all time requested for meal preparation. By the end of the hearing, the following two modifications remained in dispute

ROM -

Appellant requested PC time to assist with range of motion for each of her four extremities. MassHealth denied all of the time to assist with ROM.

The MassHealth representative explained that there are two forms of Range of Motion (ROM): active and passive.

Assistance with passive range of motion involves the PCA manipulating a member's limb because due to paralysis, the member cannot enervate his/her own muscles. The MassHealth PCA program covers assistance with passive ROM.

Assistance with active range of motion involves guiding and helping a member to move a limb that he/she can move because they do not suffer from complete paralysis and can enervate the muscles in their limbs. This describes Appellant. According to the written request and the nursing evaluation, Appellant is able to move her upper and lower extremities and does not suffer from muscle paralysis. Assistance with active range of motion is not covered under the MassHealth PCA program; therefore, all time requested for ROM was denied. The MassHealth representative also noted that there was no physician's order for ROM which is required to approve time for assistance with passive ROM.

In response, Appellant's daughter testified that after Appellant's most recent fall, both her primary care physician and rheumatologist recommended ROM. Appellant's daughter also testified that Appellant cannot get out of bed by herself and needs assistance.

In response, the MassHealth representative explained that getting in and out of bed is a transfer and all time requested for transfers was approved.

Toileting/Bowel Care –

The MassHealth representative testified that all time requested for daily bladder care was approved. Appellant also requested 13 minutes, 3 times per day, seven days per week for assistance with daily bowel care. MassHealth kept the frequency at 3 time per day, but reduced the time per incident from 13 to 10 on the grounds that 13 minutes exceeds what would be usually and customary for a person with Appellant's level of functioning.

Appellant's daughter testified that it takes longer than 13 minutes (the time requested). The daughter explained that extra time is needed for clean-up and hygiene after having a bowel movement (BM). The daughter also explained that sometimes after being cleaned, but while still in the bathroom, Appellant has to go a bit more which means she has to be cleaned twice.

In response, the MassHealth representative testified that in addition to the usual and customary time standards, her own training as a geriatric nurse provides her with the knowledge that it should not take more than 1-2 minutes to clean-up after a BM and even if that needed to be done twice for each and every BM, MassHealth has approved

4 minutes for clean-up. Of the ten minutes approved, 6 minutes is for transferring on and off the toilet and 4 minutes is for cleanup afterwards. The time to wait and/or to cue Appellant to finish is not part of the PCA program.

Findings of Fact

By preponderance of the evidence, this record supports the following findings:

1. Appellant's provider agency submitted a written prior re-authorization request seeking 48.5 hours per week and 2 overnight hours of PCA services.
2. MassHealth modified the request approving 44.75 hours per week and 2 overnight hours.
3. According to the written request, Appellant is an elderly female, legally blind since birth, afflicted with degenerative joint disease causing pain in hands, knees, feet, all joints; fibromyalgia; migraine headaches three times per month; tendinitis of shoulders; gastritis; sinus infection; chronic allergic rhinitis and hypoglycemia.
4. Appellant reported a history of hypothyroidism (2012); basal cell carcinoma (2020) and hypoglycemia (2017).
5. Appellant was noted to have poor fine-motor skills, generalized weakness, and compressed discs in L5 area.
6. Appellant resides in a single-level living space with laundry in the apartment.
7. Appellant is reported to be weak due to back and joint pain.
8. The request states Appellant is in need of assistance with transfers along with contact guard for mobility and safety.
9. Appellant and her daughter reported that Appellant had one fall this year where she fainted in the hallway.
10. Appellant denied having any ER visits or hospitalizations over the past year.
11. Appellant has a new diagnosis of high blood pressure along with the addition of the medication, lisinopril.
12. Appellant now experiences leg swelling requiring the use of TED stockings.
13. Appellant reported doing well with her current level of care with additional time needed for transport due to additional MD appointments for dermatology and

vascular issues.

14. MassHealth approved all of the time requested for assistance except in three areas: Range of Motion (ROM); toileting/bowel care and meal preparation.
15. At hearing, MassHealth agreed to restore all time requested for meal preparation.
16. Appellant requested PC time to assist with range of motion for each of her four extremities.
17. MassHealth denied all of the time to assist with ROM.
18. There are two forms of Range of Motion (ROM): active and passive.
19. Assistance with passive range of motion involves the PCA manipulating a member's limb because due to paralysis, the member cannot enervate his/her own muscles.
20. Assistance with active range of motion involves guiding and helping a member to move a limb that he/she can move because they do not suffer from complete paralysis and can enervate the muscles in their limbs.
21. According to the written request and the nursing evaluation, Appellant is able to move her upper and lower extremities and does not suffer from muscle paralysis.
22. Assistance with ROM for Appellant would constitute active range of motion.
23. The PA request contained no physician's order for ROM.
24. MassHealth approved all time requested for daily bladder care.
25. Appellant also requested 13 minutes, 3 times per day, seven days per week for assistance with daily bowel care.
26. MassHealth kept the frequency at 3 time per day, but reduced the time per incident from 13 to 10 on the grounds that 13 minutes exceeds what would be usually and customary for a person with Appellant's level of functioning.
27. Sometimes after being cleaned, but while still in the bathroom, Appellant has to go a bit more which means she has to be cleaned twice.
28. It should not take more than 1-2 minutes to clean-up after a BM and even if that needed to be done twice for each and every BM, MassHealth has approved 4 minutes for clean-up.

29. Of the 10 minutes approved, 6 minutes is for transferring on and off the toilet and 4 minutes is for clean-up and hygiene.

Analysis and Conclusions of Law

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (*Massachusetts Inst. of Tech. v. Department of Pub. Utils.*, 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

ROM – It was undisputed that Appellant can enervate the muscles in each of her extremities, so assistance with ROM would be active, not passive. The PCA program covers assistance with certain specified activities of daily living (ADLs) (130 CMR 422.411 and 130 CMR 422.410(A)). While assistance with passive ROM is listed, assistance with active ROM is not (130 CMR 422.410(A)(5)). Accordingly, MassHealth properly applied to controlling regulations to Appellant's condition in denying time requested for assistance with active ROM.

Toileting – MassHealth based the reduction of 13 minutes to 10 minutes per incident of bowel care based on the usual and customary time allotted for a person with Appellant's functional ability. Appellant's daughter provided no basis to support her statement that more than the requested 13 minutes (let alone the approved 10 minutes) was needed due to clean-up and hygiene. Appellant's daughter failed to explain how she knows, down to the minute, how long clean-up and hygiene take. MassHealth, on the other hand, provided testimony from a licensed professional with experience in geriatric nursing who testified that clean-up and hygiene following a BM should take no more than 1-2 minutes. Of the 10 minutes approved for each incident, MassHealth has approved 4 minutes for clean-up and hygiene. There is no supported, reasonable basis to conclude that the time MassHealth has approved for toileting is not sufficient.

On this record, Appellant has not met her burden of demonstrating the invalidity of MassHealth's action. Accordingly, the appeal is denied.

Order for MassHealth

Remove Aid pending and proceed with notice of January 12, 2023, but restore time for meal prep as requested.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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