

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2300708
Decision Date:	5/12/2023	Hearing Date:	3/1/2023
Hearing Officer:	Cynthia Kopka	Record Open to:	3/15/2023

Appearance for Appellant:




Appearance for MassHealth:

Mary Jo Elliott, 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:	Approved in part; denied in part	Issue:	PCA Services
Decision Date:	5/12/2023	Hearing Date:	3/1/2023
MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	
Hearing Location:	Quincy (remote)	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

By notice dated January 24, 2023, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on January 27, 2023. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032. Appellant was entitled to retain her prior level of services pending the outcome of the hearing. 130 CMR 610.036.

Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of PCA 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 PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and testified as follows. Appellant is in her sixties with diagnoses of fibromyalgia, left side stroke, osteoporosis,

scoliosis, and disc compression. Exhibit 4 at 9. Appellant has been hospitalized four times in the past year, including for a broken shoulder. *Id.* at 10. Appellant was also seen for chest pain and cerebrovascular accident (CVA, or stroke). *Id.* Appellant is on oxygen at night and as needed during the day. Appellant uses a walker and physical assistance for mobility inside the home and a wheelchair outside the home. Appellant has limited range of motion in her left shoulder and decreased grasp in her left hand. *Id.* Appellant gets shortness of breath on exertion and has a standing tolerance of less than one minute. Appellant has right hand numbness in four fingers, a new diagnosis. *Id.*

Boston Council for Independent Living (BCIL), Appellant's Personal Care Management Agency (PCMA), submitted an re-evaluation for PCA services, requesting 76.0 day/evening hours and 14 night hours per week of PCA services on Appellant's behalf. On January 24, 2023, MassHealth modified Appellant's request and approved 62.25 day/evening and 14 night PCA hours per week. The dates of service were from February 1, 2023 through January 31, 2024. Exhibit 1. Appellant was entitled to retain her prior level of services pending the outcome of the hearing, which was 73.5 day/evening hours and 14 night hours.

MassHealth modified the requested PCA hours for three activities of daily living (ADLs): mobility, passive range of motion (PROM) and dressing/undressing. Exhibit 4 at 3. MassHealth also modified one instrumental activity of daily living (IADLs): meal preparation. *Id.* MassHealth modified some of the night activities, but this did not impact the total night hours approved. At hearing, MassHealth restored the time requested for dressing and undressing based on testimony provided, approving 30 minutes daily for dressing and 20 minutes daily for undressing, as requested. This approval is addressed in the order below.

In the area of mobility, Appellant requested 7 minutes, 8 times a day, 7 days per week for assistance with ambulation; 7 minutes, 8 times a day, 7 days per week for transfers; and 5 minutes, 4 times a day, 7 days per week for repositioning. MassHealth modified the request, approving 10 minutes, 8 times per day, 7 days per week combined for both transfers and ambulation. Based on all the information provided, including Appellant's standing tolerance of less than one minute, MassHealth determined that 10 minutes for the action of transferring and ambulation was medically necessity. Exhibit 4 at 11-12. In sum, the combined request of 14 minutes for transfers and ambulation was reduced to 10 minutes. MassHealth acknowledged that some transfers, such as from the bed to standing, might take more time than moving from a chair to standing, but argued that an average of 5 minutes per transfer was medically appropriate. MassHealth questioned why it would take more than 5 minutes to assist Appellant from sitting to standing, and then another 5 minutes to move to another room in the house. MassHealth noted that Appellant has a short stature and slight build (5'1" and 125 lbs), requiring only a one person transfer. *Id.* at 9-10.

For repositioning, MassHealth approved 1 minute, 4 times per day, 7 days per week. MassHealth noted that this time is just to move Appellant in a new comfortable position and adjust pillows or other support. MassHealth noted that Appellant is also repositioned during the 8 times per day she is transferred and ambulates.

Appellant and her representative appeared by phone and testified as follows. Appellant testified that

the activities of ambulation and transfer are two separate activities and should not have been combined. Appellant is not improving after her recent surgery. Appellant can get dizzy when she stands up and her PCA must be near in case Appellant falls. For the acts of transferring and ambulating, Appellant needs her PCA to help her up with two hands. Appellant wears a belt around her midsection, and the PCA holds the belt while Appellant is standing and walking. Appellant gets dizzy often and has weakness. She cannot use her left leg. Appellant did not have a specific estimate of how long each transfer and ambulation takes and was hesitant to say whether 10 minutes was a fair estimate. Appellant testified that it takes more than 10 minutes to get in and out of bed. Regarding repositioning, Appellant testified that she needs help moving both legs while sitting on the bed. Appellant often shifts to the right side without realizing, due to her stroke and her severe scoliosis. Her PCA always asks why Appellant ends up on her right side. Appellant argued that she is repositioned several times per hour. MassHealth agreed that it seems that the frequency of the repositioning request was inadequate, and Appellant's representative testified that the agency could seek an adjustment to increase the frequency. The MassHealth representative testified that some of the repositioning task might overlap with the next ADL, PROM.

For PROM, Appellant requested 10 minutes, 3 times per day, 7 days a week for each of the four extremities. *Id.* at 13. MassHealth approved 5 minutes, 3 times per day, 7 days per week. The MassHealth representative testified that the requested time would equal 2 hours daily of PROM assistance, which is extremely excessive for an individual who has disc compression, broken shoulder, total hip replacement, and a hand splint. MassHealth testified that the amount of PROM performed by an unskilled PCA is contraindicated and should be performed by a skilled therapist. However, the nurse reviewer who made the modification approved half of the time requested as additional repositioning. The MassHealth representative testified that as a nurse, she would not have approved any time for PROM, even with Appellant's stroke and immobilization. Appellant is in a walker and is capable of moving around and PROM is for someone who cannot move. Appellant's issues are not necessarily neurodegenerative and are more musculoskeletal (such as broken bones), which are contraindicated with PROM.

Appellant's agency requested assistance on Appellant's behalf for "PROM and stretching exercises 3x a day due to stiffness, pain, L side weakness r/t fibromyalgia, stroke, painful joint pain, and to increased circulation and decreased muscle spasms." *Id.* at 13. Appellant and her representative testified that her PCA assists her with her physical exercise and helps her move her arms and legs. The PCA massages her. Appellant estimated that it takes more than 12 minutes and her right leg needs a lot of time. The doctor told Appellant to move as much as she can. Appellant's representative argued that Appellant's doctor knows the situation the best and has ordered Appellant to receive this care.

The MassHealth representative testified that PROM is not helping someone get up and move, it is for someone who is unable to move a joint a full range. In Appellant's case, PROM is not appropriate. The requested amount exceeds what would be approved for someone with a spinal injury who cannot move. PROM is meant for moving the joints and preventing contractures. It is not for assistance walking up and down a hallway for exercise. Appellant testified that she is not just lying in bed during the PROM, but is sitting on the side of the bed. Every day is different. The MassHealth representative emphasized that Appellant's needs are skilled and should be performed

by a skilled therapist. Appellant's representative testified that Appellant's doctor would submit a note supporting the need for PROM.

In the area of meal preparation, Appellant requested 15 minutes for breakfast, 30 minutes for lunch, 45 minutes for dinner, and 15 minutes for snacks, for a total of 105 minutes per day. *Id.* at 24-25. MassHealth approved a total of 95 minutes per day, only adjusting the assistance for snacks to 5 minutes per day. The remaining meals were approved in full. MassHealth typically approves 90 minutes for someone totally dependent and if that person requires modification to meals, such as a liquid or special diet. The MassHealth representative testified that MassHealth approved more than 90 minutes based on the circumstances, but additional time would be considered excessive.

Appellant testified that she eats snacks 3 or 4 times throughout the day, typically fruit, yogurt, and crackers. It takes more than 5 minutes to have snacks daily because Appellant has problems swallowing. Appellant's PCA prepares the fruit and makes the yogurt from scratch weekly. It takes more than 15 minutes to prepare the yogurt. Appellant's PCA also cuts bananas, strawberries, and mango. Regarding meal preparation as a whole, every day is different, sometimes breakfast is a smaller meal, lunch is a hot meal, and, dinner is usually a nice, hot meal. Appellant is Middle Eastern and likes to eat certain foods certain ways. Appellant estimated that breakfast preparation takes 15-20 minutes, lunch is 25-30 minutes, and dinner is 45-55 minutes.

The hearing record was held open through March 24, 2023 to allow Appellant to submit a doctor's note supporting PROM, and for MassHealth to review and respond. Exhibit 5. On March 16, 2023, Appellant submitted a note from her primary care physician (PCP) which stated Appellant "had a right hip fracture for which recovery has been slow. This, along with previously existing gait instability, and due to COPD, she has limited mobility. I recommend she receive assistance from a PCA or [sic] up to 30 minutes four times per day to help with walking." Exhibit 6.

MassHealth submitted a response on March 17, 2023. The MassHealth representative stated that the doctor's note was not a prescription for PROM. MassHealth cited 130 CMR 422.402, which defines PROM as "movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move." MassHealth denied the request for additional assistance with PROM based on the submission. Exhibit 7. Appellant requested additional time to submit a letter regarding PROM. Exhibit 8. This request was denied, but a new letter for PROM could be the basis for a request for an adjustment. Exhibit 9.

Findings of Fact

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

1. Appellant's PCMA submitted a re-evaluation for PCA services, requesting 76.0 day/evening hours and 14 night hours per week of PCA services on Appellant's behalf.
2. On January 24, 2023, MassHealth modified Appellant's request and approved 62.25 day/evening and 14 night PCA hours per week. The dates of service were from February 1,

2023 through January 31, 2024. Exhibit 1.

3. Appellant filed a timely appeal on January 27, 2023 and was entitled to retain her prior level of services (73.5 day/evening PCA hours) pending the outcome of the hearing. Exhibit 2.
4. Appellant is in her sixties with diagnoses of fibromyalgia, left side stroke, osteoporosis, scoliosis, and disc compression. Exhibit 4 at 9.
5. Appellant has been hospitalized four times in the past year, including for a broken shoulder. Appellant was also seen for chest pain and CVA. Appellant is on oxygen at night and as needed during the day. Appellant uses a walker and physical assistance for mobility inside the home and wheelchair outside the home. Appellant has limited range of motion in her left shoulder and decreased grasp in her left hand. Appellant gets shortness of breath on exertion and has a standing tolerance of less than one minute. Appellant has right hand numbness in four fingers, a new diagnosis. *Id.* at 10.
6. For assistance with mobility, Appellant requested 7 minutes, 8 times a day, 7 days per week for assistance with ambulation; and 7 minutes, 8 times a day, 7 days per week for transfers. *Id.* at 11-12.
7. MassHealth approved 10 minutes, 8 times per day, 7 days per week for ambulation and transfers combined.
8. Appellant has a short stature and slight build. *Id.* at 9-10.
9. Appellant has standing tolerance of less than one minute. *Id.* at 9.
10. Appellant testified that she can get dizzy when she stands up and her PCA must be near in case Appellant falls. For the acts of transferring and ambulating, Appellant needs her PCA to help her up with two hands. Appellant wears a belt around her midsection, and the PCA holds the belt while Appellant is standing and walking. Appellant also has weakness and cannot use her left leg.
11. For assistance with repositioning, Appellant requested 5 minutes, 4 times a day, 7 days per week. *Id.* at 12.
12. MassHealth approved 1 minute, 4 times per day, 7 days per week for repositioning.
13. Appellant testified that she requires repositioning several times per hour. Appellant often shifts to the right side without realizing, due to her stroke and her scoliosis. Appellant requires assistance moving both her legs.
14. For PROM, Appellant requested 10 minutes, 3 times per day, 7 days a week for each of the four extremities. *Id.* at 13.

15. MassHealth approved 5 minutes, 3 times per day, 7 days per week.
16. The MassHealth representative testified that the requested time for unskilled PROM assistance is contraindicated for an individual who has disc compression, broken shoulder, total hip replacement, and a hand splint.
17. Appellant's agency requested assistance on Appellant's behalf for "PROM and stretching exercises 3x a day due to stiffness, pain, L side weakness r/t fibromyalgia, stroke, painful joint pain, and to increased circulation and decreased muscle spasms." *Id.* at 13.
18. Appellant testified that the PCA assists her with physical exercise.
19. On March 16, 2023, Appellant submitted a note from her primary care physician (PCP) which stated Appellant "had a right hip fracture for which recovery has been slow. This, along with previously existing gait instability, and due to COPD, she has limited mobility. I recommend she receive assistance from a PCA or [sic] up to 30 minutes four times per day to help with walking." Exhibit 6.
20. The MassHealth representative stated that the doctor's note was not a prescription for PROM. MassHealth cited 130 CMR 422.402 and denied the request for additional assistance with PROM based on the submission. Exhibit 7.
21. In the area of meal preparation, Appellant requested 15 minutes for breakfast, 30 minutes for lunch, 45 minutes for dinner, and 15 minutes for snacks, for a total of 105 minutes per day. *Id.* at 24-25.
22. MassHealth approved a total of 95 minutes per day, adjusting the assistance for snacks to 5 minutes daily.
23. Appellant eats snacks 3 or 4 times throughout the day, typically fruit, yogurt, and crackers. Appellant's PCA makes yogurt from scratch weekly and it takes more than 15 minutes to prepare.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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.

The requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(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 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.

(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.

Here, it is undisputed that Appellant qualifies for PCA services. The only issues in dispute are MassHealth's modifications of mobility, PROM, and meal preparation.

Regarding mobility, this appeal is denied. Appellant did not provide convincing evidence that more than 10 minutes, 8 times per day, 7 days per week is medically necessary for transfers and ambulation. Appellant argued that some transfers take longer, such as from the bed to standing, but was not convincing that more time on average would be needed to complete the whole task. For repositioning, Appellant argued that she is repositioned frequently each hour. While this is credible, this would be the basis for a request for an adjustment, as MassHealth did not modify the frequency

of repositioning, only the amount of time. Appellant did not provide convincing evidence that it takes more than 1 minute to shift her back into a comfortable position, especially given her small stature.

Regarding meal preparation, this appeal is approved in part. Appellant eats fresh fruit and fresh yogurt multiple times per day for her snack and provided credible evidence that it takes her PCA time to prepare a week's worth of yogurt. That time divided among the seven days of the week adds additional time to the snack preparation task. The evidence that it takes 15 minutes to cook the yogurt would add slightly more than 2 minutes per day for the snack preparation on average. Therefore, this appeal is approved in part and a total of 8 minutes per day for snack preparation is approved.

Regarding PROM, this appeal is denied. PROM is defined by the regulation as "movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move." 130 CMR 422.402. Appellant's testimony as to the assistance that she receives from her PCA in this task along with the doctor's note provided show that the assistance described is not PROM.

Order for MassHealth

Restore the time requested for daily dressing and undressing to 30 minutes and 20 minutes, respectively, as agreed to at hearing. Increase the daily time approved for meal preparation from 95 minutes to 98 minutes.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

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General Counsel's Office –Sharon Boyle