

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2300896
Decision Date:	4/14/2023	Hearing Date:	03/08/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



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:	Dismissed in part; Denied in part	Issue:	Prior Authorization - PCA
Decision Date:	4/14/2023	Hearing Date:	03/08/2023
MassHealth's Rep.:	Mary Jo-Elliott, RN	Appellant's Rep.:	Pro se; Family; PCA
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 January 12, 2023, MassHealth modified the appellant's request for personal care attendant services, allowing fewer hours than were requested. (Exhibit 2; 130 CMR 422.412, 422.410.) The appellant filed this timely appeal on February 1, 2023. (Exhibit 3; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining that the appellant was independent with ambulating inside his home.

Summary of Evidence

On or around January 3, 2023, the appellant's personal care management ("PCM") agency, Stavros, submitted a prior authorization reevaluation requesting 26 hours and 15 minutes per week of day/evening personal care attendant ("PCA") hours and no nighttime hours. The appellant is an adult with a primary diagnosis of intellectual disability with associated impaired fine motor skills, task sequencing, judgment and safety awareness, and depth perception, amongst other limitations.

MassHealth made three modifications to this request, allowing 24 hours and 45 minutes of day/evening PCA hours per week. MassHealth only modified three categories of assistance: mobility, assistance on stairs, and grocery shopping.

For mobility, the appellant requested time for assistance “to walk over uneven surfaces when encountered.” (Exhibit 4, p. 12.) The request sought one minute, eight times per day on weekends, and one minute, six times per day on weekdays. MassHealth allowed none of this time. Regarding assistance on stairs, the request sought five minutes, four times per day, three days per week in order to go downstairs to the basement of his home to go to a recreation room. MassHealth allowed two minutes, four times per day, three days per week. Finally, the appellant sought 90 minutes per week for assistance with grocery shopping, and MassHealth allowed 75 minutes per week.

Ultimately, the appellant’s disagreement was with the re-evaluation that was performed by Stavros and submitted on the appellant’s behalf. The appellant believed that they were appealing the absence of nighttime hours from the request, rather than the small changes that MassHealth had made to the day/evening hours that were requested. The appellant’s representatives had many complaints regarding the manner in which the re-evaluation took place and regarding Stavros’s responsiveness when they attempted to address the errors they found in the request. For instance, the appellant and his PCA are both deaf and cannot participate in a telephonic evaluation, despite this, the appellant’s guardian felt pressured into a telephonic evaluation due to COVID 19 precautions. Furthermore, when the appellant’s representatives realized the errors on the request, they called repeatedly in an effort to correct them, but were never able to get through to a representative at Stavros. Finally, Stavros told them that they needed to pursue this fair hearing in order to get the corrections to the evaluation made, even though the process is for Stavros to submit an adjustment request detailing why additional hours are needed.

During the hearing, MassHealth’s representative agreed to restore all of the requested time for grocery shopping and assistance on the stairs.¹ Regarding the mobility on uneven surfaces, MassHealth’s representative explained that there are two reasons why this time was denied. First, the appellant’s description was that the appellant is independent with mobility in his own home, aside from getting to the basement. They described this need for assistance as an occasional steadying hand when the appellant is out of the house. The appellant’s representatives described that he needs assistance when going for a walk out of the house, and in one example the appellant fell taking out the garbage and badly injured himself, another example was going to the backyard for recreation. MassHealth’s representative testified that the category of mobility assistance is meant to be solely within the member’s home, and that MassHealth only covers services outside of the home when the member is going to or from a medical appointment.

Second, MassHealth argued that the nature of this assistance is “anticipatory” or “supervisory” in nature. MassHealth’s representative did not understand what specific situations gave rise to the need

¹ It was noted that the request for assistance on the stairs was not in alignment with practice. The appellant goes to the basement once per day, not twice a day, three days per week. Nonetheless, MassHealth agreed to restore all time requested as it would effectively be going to the basement once a day, six days per week.

for this service, and therefore felt this assistance should be non-covered as unpredictable supervision. The regulations prohibit PCA time for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.”

During the hearing, MassHealth’s representative confirmed that Stavros had submitted an adjustment request that sought 14 nighttime hours. MassHealth’s representative confirmed that she would review it the same day as the hearing. However, the adjustment only sought nighttime hours, so if the appellant continued to have complaints about how much day/evening time was requested in other categories of assistance, the appellant would still need to address these complaints first to Stavros and seek another adjustment.

Findings of Fact

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

1. The appellant has a primary diagnosis of intellectual disability, which impairs his fine motor skills, task sequencing, judgment and safety awareness, and depth perception. (Exhibit 4, p. 9.)
2. On or around January 3, 2023, the appellant’s PCM agency, Stavros, submitted a PCA reevaluation seeking 26 hours and 15 minutes per week of day/evening PCA assistance. No nighttime hours were requested. (Exhibit 4.)
3. MassHealth made three modifications to this request, allowing 24 hours and 45 minutes of day/evening PCA hours per week.
 - a. The request sought one minute, eight times per day on weekends, and one minute, six times per day on weekdays for mobility assistance on uneven surfaces. MassHealth allowed no time for this assistance.
 - b. Regarding assistance on stairs, the request sought five minutes, four times per day, three days per week in order to go downstairs to the basement of his home to go to a recreation room. MassHealth allowed two minutes, four times per day, three days per week.
 - c. Finally, the appellant sought 90 minutes per week for assistance with grocery shopping, and MassHealth allowed 75 minutes per week.

(Exhibit 2.)

4. The appellant’s primary dispute was with the manner in which the reevaluation was completed and submitted. It included multiple errors, including failing to request any nighttime hours. (Testimony by the appellant’s representatives).
5. At the hearing, MassHealth’s representative restored all of the time requested for assistance on stairs and assistance with grocery shopping. The agency continued to believe that time

for assistance “to walk over uneven surfaces when encountered” was inappropriate because the assistance would be excluded as supervision or anticipatory. MassHealth further argued that time may only be authorized for services inside the home. (Testimony by MassHealth’s representative.)

6. The appellant ambulates independently within his home. Outside the home, he requires a steadying hand when going for a walk or out to the back yard. In the past, the appellant has tripped while taking out the garbage and required medical attention. (Testimony by the appellant’s representatives.)

Analysis and Conclusions of Law

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

- (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.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover time waiting or downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(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 [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

This appeal is DISMISSED in part with regards to grocery shopping and assistance on the stairs. MassHealth restored in full all time requested in these categories of assistance, therefore there is no longer a MassHealth action to be reviewed through a fair hearing decision. (130 CMR 610.051(B).)

The remaining issue is whether the appellant's need for a steadying hand when he is walking across uneven surfaces can be allowed under the PCA program. There is nothing in MassHealth's rules that disallows time because it is "anticipatory." Many of the services provided by a PCA occur irregularly, and time is allowed based upon general averages of how long the task occurs and how many times per week it is required. Further, there is no explicit requirement that services be rendered inside the home.

However, PCA services are discretely defined. Time is allowed for specific tasks and disallowed for general recreation or exercise other than passive range-of-motion exercises. The examples of when this assistance would be provided highlights the difficulty of allowing this requested mobility time. PCA time may be allowed for assisting a member to leave the house, but the time is usually captured within the specific task being performed. For instance, going to a doctor's appointment, or going grocery shopping. General time for supervision, recreation, or exercise is precluded from coverage by 130 CMR 422.412.² Similarly, the example of taking the trash out could reasonably be categorized as time for housekeeping, already allowed to the PCA.

This decision does not foreclose the possibility that the appellant may have a quantifiable need for covered assistance with mobility that is not otherwise captured in the PCA evaluation system, but the appeal is DENIED with regards to the mobility requested because the services are not clearly different from services already approved or non-covered.

Order for MassHealth

None.

² The appellant may be better served in the Adult Foster Care program. This program provides a fixed per diem rate for a caregiver who lives with the MassHealth member and provides them with assistance with ADLs. (See 130 CMR 408.000.) Because the rate is per diem, it includes time that may be spent providing supervision and other services uncovered by the PCA program.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

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