

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
denied in part

Appeal Number: 2301041

Decision Date: 5/5/2023

Hearing Date: 03/22/2023

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:	5/5/2023	Hearing Date:	03/22/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Guardian
Hearing Location:	Quincy Harbor South	Aid Pending:	Yes

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 01/26/2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 66:15 day/evening hours per week plus 2 daily nighttime attendant hours to 57:00 day/evening hours per week plus 2 daily night time attendant hours for dates of service from 01/26/2023 to 01/25/2024 (130 CMR 422.410; Exhibit 1). A timely appeal was filed on the appellant's behalf by his permanent guardian² on 02/08/2023 and the appellant's benefits are protected at 59:45 day/evening hours of PCA services plus 2 daily nighttime attendant hours pending the outcome of this appeal (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.

² See Exhibit 4.

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 01/17/2023 from his PCA provider, Stavros, Inc., and is a re-evaluation request for the dates of service of 01/26/2023 to 01/25/2024. In the prior authorization request for PCA services, the provider requested 66:15³ day/evening hours per week plus 2 daily nighttime attendant hours.

The appellant is an adult and he lives with his legal guardian. The primary diagnoses affecting the appellant's ability to function independently are traumatic brain injury status post motor vehicle accident with shunt implant in 2008; G/J tube; meningitis, seizure disorder, spasticity; aphasia; history of cranioplasty; history of chronic stasis ulcers; MRSA with chronic and recurrent c-diff; quadriplegia; non-ambulatory/bedbound; history of aspiration; and pneumonia (Exhibit 5).

The Optum representative testified that on 01/26/2023 MassHealth modified the PCA request to 57:00 day/evening hours per week. The nighttime attendant hours were approved as requested at 2 hours per night. MassHealth modified the request for PCA services in the Activity of Daily Living (ADLs) tasks of dressing and undressing and in the Instrumental Activity of Daily Living (IADL) task of laundry (Exhibits 1 and 5).

Dressing/Undressing

The appellant's PCA provider requested 15 minutes, 4 times per day, 7 times per week (15 X 4 X 7)⁴ for PCA assistance with dressing and 10 X 4 X 7 for assistance with undressing. The provider noted that the appellant requires physical assistance with upper extremity dressing and undressing, physical assistance with lower extremity dressing and

³ PCA time is referred to in this format, 32:30, to signify 32 hours and 30 minutes.

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.

undressing, and physical assistance with donning/doffing footwear.

MassHealth modified the request for assistance with dressing to 15 X 1 X 7 and with undressing to 10 X 1 X 7. The MassHealth representative testified that MassHealth did not modify the time requested for the task, but the frequency. She explained that the time requested is “longer than ordinarily required” for someone with the appellant’s documented needs. She testified that the documentation states the appellant wears a hospital johnny. This time requested and approved for dressing and undressing is for dressing once in the morning, when the appellant awakes for the day, then undressing in the evening before bedtime. Changing clothing due to incontinence accidents or wound care was requested and approved in the areas of toileting and wound care.

The appellant’s guardian testified on behalf of the appellant. He testified that the PCA changes the appellant’s clothing 2-3 times per day. The appellant has diarrhea and a catheter condom. The catheter frequently comes off and urine leaks onto the appellant and his bed. The appellant has bed sores so it is important that the urine be cleaned up as quickly as possible. The appellant’s guardian explained that the time is not adequate to meet the appellant’s needs.

The MassHealth representative responded that based on the testimony, the time as modified and including the time approved for wound care and toileting, should provide enough assistance to change the appellant’s clothing as often as he needs. If the appellant requires more than 15 minutes for dressing (for each instance) or 10 minutes for undressing, then the guardian must contact the PCM provider.

Laundry

The appellant’s provider requested 90 X 1 X 1 for assistance with laundry. MassHealth modified the request to 60 X 1 X 1 based on the fact that there is more than one consumer in the household who receives PCA services and that the IADL time for task must be calculated on a shared basis based on the regulations. After the appellant’s guardian provided further information about the appellant’s needs for assistance with laundry, MassHealth restored all time requested for this task (90 X 1 X 1).

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 01/17/2023 from his PCA provider, Stavros, Inc., and is a re-evaluation request for the dates of service of 01/26/2023 to 01/25/2024 (Testimony; Exhibit 5).

2. In the prior authorization request for PCA services, the provider requested 66:15 day/evening hours of assistance per week plus 2 daily nighttime attendant hours (Testimony; Exhibit 5).
3. The appellant is an adult who lives with his legal guardian. The primary diagnoses affecting the appellant's ability to function independently are traumatic brain injury status post motor vehicle accident with shunt implant in 2008; G/J tube; meningitis, seizure disorder, spasticity; aphasia; history of cranioplasty; history of chronic stasis ulcers; MRSA with chronic and recurrent c-diff; quadriplegia; non-ambulatory/bedbound; history of aspiration; and pneumonia (Testimony; Exhibit 5).
4. On 01/26/2023, MassHealth modified the PCA request to 57:00 day/evening hours per week. Nighttime attendant hours approved as requested (Testimony; Exhibits 1 and 5).
5. A timely appeal was filed on the appellant's request on 02/08/2023 and he continues to receive 59:45 day/evening hours of PCA assistance plus 2 daily nighttime attendant hours pending this appeal (Exhibits 2 and 5).
6. A fair hearing took place on 03/22/2023. The appellant's legal guardian appeared at the fair hearing as the appellant's appeal representative (Exhibits 2 - 4).
7. In the area of dressing/undressing, the appellant's PCA provider requested 15 minutes, 4 times per day, 7 days per week (15 X 4 X 7)⁵ for assistance with dressing and 10 X 4 X 7 for assistance with undressing. The provider noted that the appellant requires physical assistance with upper extremity dressing and undressing, physical assistance with lower extremity dressing and undressing, and physical assistance with donning/doffing footwear (Testimony; Exhibits 1 and 5).
8. MassHealth modified the request for assistance with dressing to 15 X 1 X 7 and with undressing to 10 X 1 X 7 (Testimony; Exhibits 1 and 5).
9. Documentation included with the prior authorization request states the appellant wears a hospital johnny and that time was approved as requested in other areas for changing the appellant's johnny with wound care and for bladder care (Testimony; Exhibit 5).
10. The appellant's provider requested 90 X 1 X 1 for assistance with laundry (Testimony; Exhibit 5).
11. MassHealth modified the request for assistance with laundry to 60 X 1 X 1 based

⁵ PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

on the fact that there is more than one consumer in the household who receives PCA services and that the IADL time for task must be calculated on a shared basis based on the regulations (Testimony; Exhibits 1 and 5).

12. After the appellant's guardian provided further information about the appellant's needs for assistance with laundry, MassHealth restored all time requested for this task (90 X 1 X 1) (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).

On 01/26/2023 MassHealth made three modifications to the appellant's request for PCA services submitted by his PCA provider, Stavros, Inc. The request is a re-evaluation for dates of service from 01/26/2023 to 01/25/2024. In the prior authorization request for PCA services, the provider requested 66:15 day/evening hours per week plus 2 daily nighttime attendant services. The appellant is an adult who lives with his guardian. The primary diagnoses affecting the appellant's ability to function independently are traumatic brain injury status post motor vehicle accident with shunt implant in 2008; G/J tube; meningitis, seizure disorder, spasticity; aphasia; history of cranioplasty; history of chronic stasis ulcers; MRSA with chronic and recurrent c-diff; quadriplegia; non-ambulatory/bedbound; history of aspiration; and pneumonia.

MassHealth modified the PCA request to 57:00 day/evening hours per week. Nighttime attendant hours were approved as requested at 2 daily nighttime attendant hours. MassHealth modified the request for assistance in the ADL of dressing/undressing, and in the IADL of laundry.

Dressing/Undressing

In the area of dressing/undressing, the appellant's PCA provider requested 15 minutes, 4 times per day, 7 days per week (15 X 4 X 7) for assistance with dressing and 10 X 4 X 7 for assistance with undressing. The provider noted that the appellant requires physical assistance with upper extremity dressing and undressing, physical assistance with lower extremity dressing and undressing, and physical assistance with donning/doffing footwear. MassHealth modified the request for assistance with dressing to 15 X 1 X 7 and with undressing to 10 X 1 X 7. Documentation included with the prior authorization request states the appellant wears a hospital johnny and that time was approved as requested in other areas for changing the appellant's johnny with wound care and for bladder care. The appellant's guardian testified that the time requested for dressing/undressing is primarily for changing the appellant's clothing after urinary/bowel incontinence accidents and for wound care. Since MassHealth approved all time requested for assistance with changing the appellant's clothing under the areas of toileting (bladder and bowel care) and wound care, the appellant has not met his burden of proof. MassHealth's modification is supported by the regulations and the material facts in this matter. Accordingly, this portion of the appeal is denied.

Laundry

The appellant's provider requested 90 X 1 X 1 for assistance with laundry. MassHealth modified the request for assistance with laundry to 60 X 1 X 1 based on the fact that there is more than one consumer in the household who receives PCA services and that the IADL time for task must be calculated on a shared basis based on the regulations. After the appellant's guardian provided further information about the appellant's needs for assistance with laundry, MassHealth restored all time requested for this task (90 X 1 X 1). Thus, this portion of the appeal is dismissed.

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

Order for MassHealth

Release aid pending. In the area of dressing and undressing, proceed with modifications.

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

[REDACTED]