

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2301659

Decision Date: 5/5/2023

Hearing Date: 03/29/2023

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:
Pro se

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 Program
Decision Date:	5/5/2023	Hearing Date:	03/29/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Pro se
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 02/27/2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 112:15 day/evening hours per week plus 2 daily nighttime attendant hours to 101:15 day/evening hours per week plus 2 daily night time attendant hours for dates of service from 04/05/2023 to 04/04/2024 (130 CMR 422.410; Exhibit 1). A timely appeal was filed by the appellant on 03/01/2023 and the appellant's benefits are protected 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.

Action Taken by MassHealth

MassHealth plans to modify 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 02/14/2023 from her PCA provider, [REDACTED] (Provider), and is a re-evaluation request for the dates of service of [REDACTED] 2023 to [REDACTED] 2024. In the prior authorization request for PCA services, the provider requested 112:15² day/evening hours per week plus 2 daily nighttime attendant hours.

The appellant is in her [REDACTED] and she lives independently in the community. The primary diagnoses affecting her ability to function independently are quadriplegia with no functional use of upper or lower extremities and meningomyelocele neural tube defect (Exhibit 4).

The Optum representative testified that on 02/27/2023, MassHealth modified the PCA request to 101:15 day/evening hours per week plus 2 daily nighttime attendant hours. MassHealth modified the request for PCA services in the Activity of Daily Living (ADL) tasks of grooming (hair care), dressing, undressing and eating (Exhibits 1 and 4).

Grooming (Hair Care)

The appellant's PCA provider requested 10 minutes, 1 time per day, 7 times per week (10 X 1 X 7)³ for PCA assistance with hair care. MassHealth initially modified the request for assistance with hair care to 5 X 1 X 7; however, after hearing testimony from the appellant about her hair care needs, MassHealth restored all time requested for this task (10 X 1 X 7).

Dressing/Undressing

² PCA time is referred to in this format, 112:15, to signify 112 hours and 15 minutes.

³ PCA time designated in this manner, (i.e., 10 X 1 X 7) means 10 minutes, 1 time per day, 7 times per week.

The appellant's provider requested 20 X 3 X 7 for assistance with dressing and 20 X 2 X 7 for assistance with undressing. The provider noted that the appellant requires physical assistance with upper extremity and lower extremity dressing and undressing; physical assistance with donning and doffing footwear; and with prosthetics and orthotics/braces. Also, she requires "physical assistance assemble and put away clothing, dress and undress due to paralysis and contractures. Total change of clothes 3 times daily for incontinence care, soiled clothing due to large amounts urinary output and loose stools. Process is slow, timely, painful due to spasms and contractures of extremities. Very fragile skin. States due to spasms, times have increased" (Exhibit 4).

MassHealth modified the request for assistance with dressing/undressing to 20 X 1 X 7 and 20 X 1 X 7. The MassHealth representative testified that time is approved for this task for assistance dressing her and undressing her once per day. Clothing changes for incontinence accidents are requested and approved with the time for assistance with toileting. In this case, time was approved as requested for clothing changes under the task of bladder/bowel care. To approve additional instances of dressing and undressing is duplicative of the time already approved in another area.

The appellant testified that she needs assistance getting dressed and undressed "several times a day." She stated that she drinks a lot of water and often has spasms when her absorbency product is changed, leading to incontinence accidents. She needs extra help because she has urinary incontinence accidents about four times a day, after which she needs to be bathed and her clothing needs to be changed.

Eating (Drinking Fluids)

Appellant's provider requested 4 X 20 X 7 for assistance with drinking fluids. The provider noted that the appellant is "fed all meals. She has no upper extremity movement or ability to grasp. She takes liquid frequently due to history of frequent urinary tract infections in the past. She sips small amounts a few times every hour. Requires cup to be held and straw placed in mouth. Also has a history of dehydration requiring hospitalization."

MassHealth modified the request for assistance with drinking fluids to 3 X 17 X 7, which is the time approved last year. The MassHealth representative testified that the documentation shows the appellant can independently drink from a water bottle once it is filled and placed within reach of her mouth. The PCA fills the bottle and cleans it. 51 minutes per day to fill and clean the water bottle should be adequate.

The appellant testified that she is "prone to UTI's, and dehydration." She cannot get the water herself. She has a big water bottle that is filled 3-4 times a day. The straw needs to be rinsed each time the bottle is filled. She also needs to rinse her mouth after using her inhaler.

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 02/14/2023 from her PCA provider, [REDACTED], and is a re-evaluation request for the dates of service of 0 [REDACTED] 2023 to [REDACTED] 2024 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 112:15 day/evening hours of assistance per week plus 2 daily nighttime attendant hours (Testimony; Exhibit 4).
3. The appellant is an adult who lives independently in the community. The primary diagnoses affecting her ability to function independently are quadriplegia with no functional use of upper or lower extremities and meningomyelocele neural tube defect (Testimony; Exhibit 4).
4. On 02/27/2023, MassHealth modified the PCA request to 101:15 day/evening hours per week plus 2 daily nighttime attendant hours (Testimony; Exhibits 1 and 4).
5. A timely appeal was filed on the appellant's request on 03/01/2023 (Exhibit 2).
6. A fair hearing took place on 03/29/2023 before the Board of Hearings (Exhibits 2 and 3).
7. In the area of grooming (hair care), the appellant's PCA provider requested 10 minutes, 1 time per day, 7 times per week (10 X 1 X 7) (Testimony; Exhibit 4).
8. MassHealth initially modified the request for assistance with hair care to 5 X 1 X 7; however, after hearing testimony from the appellant about her hair care needs, MassHealth restored all time requested for this task (Testimony; Exhibits 1 and 4).
9. The appellant's provider requested 20 X 3 X 7 for assistance with dressing and 20 X 2 X 7 for assistance with undressing. The provider noted that the appellant requires physical assistance with upper extremity and lower extremity dressing and undressing; physical assistance with donning and doffing footwear; and with prosthetics and orthotics/braces. Also, she requires "physical assistance assemble and put away clothing, dress and undress due to paralysis and contractures. Total change of clothes 3 times daily for incontinence care, soiled clothing due to large amounts urinary output and loose stools. Process is slow, timely, painful due to spasms and contractures of extremities. Very fragile skin. States due to spasms, times have increased" (Testimony; Exhibit 4).

10. MassHealth modified the request for assistance with dressing/undressing to 20 X 1 X 7 and 20 X 1 X 7 (Testimony; Exhibit 1).
11. Time was approved as requested for assistance with clothing changes under tasks of bladder and bowel care (Testimony; Exhibit 4).
12. Appellant's provider requested 4 X 20 X 7 for assistance with drinking fluids. The provider noted that the appellant is "fed all meals. She has no upper extremity movement or ability to grasp. She takes liquid frequently due to history of frequent urinary tract infections in the past. She sips small amounts a few times every hour. Requires cup to be held and straw placed in mouth. Also has a history of dehydration requiring hospitalization" (Testimony; Exhibit 4).
13. Appellant requires the PCA to fill and rinse her water bottle 3-4 times a day. She is independent with drinking fluids if the water bottle is placed within reach of her mouth (Testimony; Exhibit 4).
14. MassHealth modified the request for assistance with drinking fluids to 3 X 17 X 7, allowing for 51 minutes per day for the PCA to fill and rinse the appellant's water bottle and to place it within her reach (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 02/14/2023 from her PCA provider, [REDACTED]. The request is a re-evaluation for dates of service from [REDACTED] 2023 to [REDACTED] 2024. In the prior authorization request for PCA services, the provider requested 112:15 day/evening hours per week plus 2 daily nighttime attendant hours. The appellant is an adult woman who lives independently in the community. The primary diagnoses affecting her ability to function independently are quadriplegia with no functional use of upper or lower extremities and meningomyelocele neural tube defect.

MassHealth modified the PCA request to 101:15 day/evening hours per week plus 2 daily nighttime attendant hours. MassHealth modified the request for assistance in the ADLs of grooming (hair care), dressing, undressing and eating (assistance taking fluids).

Grooming (Hair Care)

In the area of grooming (hair care), the appellant's PCA provider requested 10 minutes, 1 time per day, 7 times per week (10 X 1 X 7). MassHealth initially modified the request for assistance with hair care to 5 X 1 X 7; however, after hearing testimony from the appellant about her hair care needs, MassHealth restored all time requested for this task. Accordingly, this portion of the appeal is dismissed.

Dressing/Undressing

The appellant's provider requested 20 X 3 X 7 for assistance with dressing and 20 X 2 X 7 for assistance with undressing. The provider noted that the appellant requires physical assistance with upper extremity and lower extremity dressing and undressing; physical assistance with donning and doffing footwear; and with prosthetics and orthotics/braces. Also, she requires "physical assistance assemble and put away clothing, dress and undress due to paralysis and contractures. Total change of clothes 3 times daily for

incontinence care, soiled clothing due to large amounts urinary output and loose stools. Process is slow, timely, painful due to spasms and contractures of extremities. Very fragile skin. States due to spasms, times have increased.”

The appellant stated that the time requested was to change her clothing after incontinence accidents, which happen frequently. MassHealth modified the request for assistance with dressing/undressing to 20 X 1 X 7 and 20 X 1 X 7, basing its decision on the fact the PCA time for this task is for dressing in the beginning of the day and then undressing before bedtime. Assistance with any changes of clothing following an incontinence accident is approved under the task of toileting (bladder and bowel care). All PCA time was approved as requested for bladder and bowel care, including time to manage clothing. MassHealth’s modification is supported by the regulations and the material facts in the hearing record. This portion of the appeal is therefore denied.

Eating (Fluid Intake)

Appellant’s provider requested 4 X 20 X 7 for assistance with drinking fluids. The provider noted that the appellant is “fed all meals. She has no upper extremity movement or ability to grasp. She takes liquid frequently due to history of frequent urinary tract infections in the past. She sips small amounts a few times every hour. Requires cup to be held and straw placed in mouth. Also has a history of dehydration requiring hospitalization.” The appellant stated that she requires the PCA to fill and rinse her water bottle 3-4 times a day. She is independent with drinking fluids if the water bottle is placed within reach of her mouth. MassHealth modified the request for assistance with drinking fluids to 3 X 17 X 7, allowing for 51 minutes per day for the PCA to fill and rinse the appellant’s water bottle and to place it within her reach. The appellant has not shown by the requisite quantum of proof that MassHealth’s modification is incorrect. Accordingly, this portion of the appeal is denied.

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

Order for MassHealth

Release aid pending. In the area of hair care, approve all time as requested (10 X 1 X 7). Proceed with all other modifications.

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