

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2301893
Decision Date:	6/2/2023	Hearing Date:	04/04/2023
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:
[Redacted], Husband

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:	Approved in part; Denied in part	Issue:	Personal Care Attendant Services
Decision Date:	6/2/2023	Hearing Date:	04/04/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Pro se with Husband
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 02/22/2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 55:45 day/evening hours per week to 48:15 day/evening hours per week for dates of service from 02/25/2023 to 02/24/2024 (130 CMR 422.410; Exhibit 1). A timely appeal was filed by the appellant on 03/09/2023 and the appellant's benefits are protected at 53:00 day/evening hours per week plus two 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.

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 02/07/2023 from her PCA provider, Stavros Center for Independent Living, Inc. (Provider), and is a re-evaluation request for the dates of service of 02/25/2023 to 02/24/2024. In the prior authorization request for PCA services, the provider requested 55:45² day/evening hours per week. Nighttime attendant hours were not requested.

The appellant is in her 60's and she lives independently in the community with her husband. The primary diagnosis affecting her ability to function independently is Dementia (Exhibit 4).

The Optum representative testified that on 02/22/2023, MassHealth modified the PCA request to 48:15 day/evening hours per week. MassHealth modified the request for PCA services in the Activity of Daily Living (ADL) tasks of bladder care, bowel care, digital dis-impaction and toileting transfers (Exhibits 1 and 4).

Bladder Care

The appellant's PCA provider requested 10 minutes, 3 times per day, 7 times per week (10 X 3 X 7)³ and 5 X 3 X 7 for PCA assistance with bladder care. The provider noted that the appellant requires "physical assistance with toilet hygiene; physical assistance with clothing management; physical assistance with changing absorbent product; physical assistance with emptying foley/urostomy bag; and physical assistance with regular transfer."

MassHealth modified the requested time for assistance with bladder care to 5 X 6 X 7. The

² PCA time is referred to in this format, 55:45, to signify 55 hours and 45 minutes.

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

MassHealth representative testified that the time requested is longer than ordinarily required for someone with the appellant's abilities. She further testified that the documentation indicates the appellant needs assistance emptying the catheter bag and that 5 minutes, 6 times a day should be enough time to assist with the task.

The appellant responded that sometimes her catheter leaks and urine gets on her clothing. She needs to wear Depend absorbency products. When there is a leak, her clothes need to be changed and she needs to be "washed down" to get the urine off her. She fears skin breakdown. It takes 15-20 minutes to clean up when there is a leak. Emptying the catheter and the collection bag takes about 10 minutes, 6 times per day. The appellant testified that she receives Botox injections in her bladder that help for a while, but as the time gets closer to the next treatment, she has more leaks.

The MassHealth representative responded that she could add an additional 20 minutes per week for additional bladder care, including the changing of the catheter.

The appellant stated that the time approved would meet her needs.

Bowel Care

The appellant's provider requested 25 X 2 X 7 for assistance with bowel care. The provider noted that the appellant is "dependent for Hoyer transfer to/from bed and return to wheelchair, to change adult brief, hygiene, clothing management, digital dis-impaction of stool, to empty collection bag due to impaired range of motion affecting bending/twisting/reach, limited use of both upper extremities, generalized weakness/fatigue. Task completed in bed requiring turning/repositioning; consumer uses larger bed bag daily, no bag change required at hour of sleep."

MassHealth modified the request for assistance with bowel care to 20 X 1 X 7. The MassHealth representative testified that the time requested is longer than ordinarily required for someone with the appellant's abilities.

The appellant responded that she needs assistance with bowel care. She needs someone to help her "rock" to help her relieve herself. She needs assistance with bowel care 2 times every day.

Dis-Impaction of Stool

The appellant's provider requested 25 X 2 X 7 for assistance with bowel impaction. MassHealth denied the request for assistance with bowel dis-impaction. The MassHealth representative testified that this task is beyond the scope of the PCA program, since the PCA is not skilled and cannot make assessments that are necessary for this task.

The appellant responded that she needs assistance with this task. She stated that 25 minutes, 2 times a day is necessary.

Special Transfers

The appellant's provider requested 10 X 4 X 7 for assistance with transfers. The provider noted that she needs "maximum assistance for wheelchair mobility when fatigued; dependent for Hoyer lift transfers from bed or recliner to wheelchair and return, for boost/bolstering/off-loading both lower extremities due to non-use of lower extremities, limited use of both upper extremities and generalized weakness/fatigue."

MassHealth modified the time requested for special transfers to 10 X 2 X 7. The MassHealth representative testified that 4 additional transfers were approved for mobility/transfers and for bowel care.

The appellant stated that the time, as modified, would meet her needs.

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 02/07/2023 from her PCA provider, Stavros Center for Independent Living, Inc., and is a re-evaluation request for the dates of service of 02/25/2023 to 02/24/2024 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 55:45 day/evening hours of assistance per week (Testimony; Exhibit 4).
3. Nighttime attendant hours were not requested (Testimony; Exhibit 4).
4. The appellant is an adult who lives independently in the community with her husband. The primary diagnosis affecting her ability to function independently is Devic's Disease (Testimony; Exhibit 4).
5. On 02/22/2023, MassHealth modified the PCA request to 48:15 day/evening hours per week (Testimony; Exhibits 1 and 4).
6. The appellant's PCA time is protected at 53:00 day/evening hours plus 2 daily nighttime attendant hours pending the outcome of this appeal (Testimony; Exhibit 4).

7. A timely appeal was filed on the appellant's request on 03/09/2023 (Exhibit 2).
8. A fair hearing took place on 04/04/2023 before the Board of Hearings (Exhibits 2 and 3).
9. The appellant's PCA provider requested 10 X 3 X 7 and 5 X 3 X 7 for PCA assistance with bladder care. The provider noted that the appellant requires "physical assistance with toilet hygiene; physical assistance with clothing management; physical assistance with changing absorbent product; physical assistance with emptying foley/urostomy bag; and physical assistance with regular transfer" (Testimony; Exhibit 4).
10. MassHealth modified the request for assistance with bladder care to 5 X 6 X 7 plus an additional 20 X 1 X 1 (Testimony; Exhibits 1 and 4).
11. The appellant agreed that the time, as modified by MassHealth for bladder care would meet her needs (Testimony).
12. The appellant's provider requested 25 X 2 X 7 for assistance with bowel care. The provider noted that the appellant is "dependent for Hoyer transfer to/from bed and return to wheelchair, to change adult brief, hygiene, clothing management, digital dis-impaction of stool, to empty collection bag due to impaired range of motion affecting bending/twisting/reach, limited use of both upper extremities, generalized weakness/fatigue. Task completed in bed requiring turning/repositioning; consumer uses larger bed bag daily, no bag change required at hour of sleep" (Testimony; Exhibit 4).
13. MassHealth modified the request for assistance with bowel care to 20 X 1 X 7 (Testimony; Exhibit 1).
14. The appellant needs assistance from the PCA to "rock" her so that she can have a bowel movement 2 times per day (Testimony).
15. The appellant's provider requested 25 X 2 X 7 for assistance with bowel dis-impaction. The PCA uses his/her finger to assist the appellant with bowel movements (Testimony; Exhibit 4).
16. MassHealth denied the request for assistance with bowel dis-impaction (Testimony; Exhibit 4).
17. The MassHealth representative testified that assistance with bowel dis-impaction is beyond the scope of the PCA program, since the PCA is not skilled and cannot make assessments that are necessary for this task (Testimony; Exhibit 4).
18. The appellant's provider requested 10 X 4 X 7 for assistance with transfers. The provider

noted that she needs “maximum assistance for wheelchair mobility when fatigued; dependent for Hoyer lift transfers from bed or recliner to wheelchair and return, for boost/bolstering/off-loading both lower extremities due to non-use of lower extremities, limited use of both upper extremities and generalized weakness/fatigue” (Testimony; Exhibit 4).

19. MassHealth modified the request for assistance with special transfers to 10 X 2 X 7 (Testimony; Exhibit 4).
20. The appellant agreed that 10 X 2 X 7 is adequate time for assistance with special transfers (Testimony; Exhibit 4).

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 02/07/2023 from her PCA provider, Stavros Center for Independent Living, Inc. The request is a re-evaluation for dates of service from 02/25/2023 to 02/24/2024. In the prior authorization request for PCA services, the provider requested 55:45 day/evening hours per week. Nighttime attendant hours were not requested. The appellant is an adult woman who lives independently in the community with her husband. The primary diagnosis affecting her ability to function independently is Devic's Disease.

MassHealth modified the PCA request to 48:15 day/evening hours per week. The appellant timely appealed MassHealth's modification and a fair hearing was held before the Board of Hearings. In the modification notice, MassHealth modified the request for assistance in the ADLs of bladder care, bowel care, dis-impaction of stool, and special transfers.

Bladder Care

The appellant's PCA provider requested 10 X 3 X 7 and 5 X 3 X 7 for PCA assistance with bladder care. The provider noted that the appellant requires "physical assistance with toilet hygiene; physical assistance with clothing management; physical assistance with changing absorbent product; physical assistance with emptying foley/urostomy bag; and physical assistance with regular transfer."

MassHealth modified the request for assistance with bladder care to 5 X 6 X 7 plus an additional 20 X 1 X 1. The appellant agreed that the time, as modified by MassHealth for bladder care, would meet her needs. Accordingly, this portion of the appeal is denied.

Bowel Care

The appellant's provider requested 25 X 2 X 7 for assistance with bowel care. The provider noted that the appellant is "dependent for Hoyer transfer to/from bed and return to wheelchair, to change adult brief, hygiene, clothing management, digital dis-impaction of stool, to empty collection bag due to impaired range of motion affecting bending/twisting/reach, limited use of both upper extremities, generalized weakness/fatigue. Task completed in bed requiring turning/repositioning; consumer uses larger bed bag daily, no bag change required at hour of sleep." MassHealth modified the request for assistance with bowel care to 20 X 1 X 7. The basis

for MassHealth's modification was that the time requested exceeds the ordinary time required by someone with the appellant's abilities. The appellant testified credibly that she needs assistance from the PCA to "rock" her so that she can have a bowel movement 2 times per day. The appellant has met the burden of showing that the time requested is medically necessary. Accordingly, the full time requested for this task is approved. This portion of the appeal is approved.

Bowel Dis-Impaction

The appellant's provider requested 25 X 2 X 7 for assistance with bowel dis-impaction. The PCA uses his/her finger to assist the appellant with bowel movements. MassHealth denied the request for assistance with bowel dis-impaction. The MassHealth representative testified credibly that, based on her professional opinion, assistance with bowel dis-impaction is beyond the scope of the PCA program, since the PCA is not skilled and cannot make assessments that are necessary for this task. MassHealth's modification in this area is upheld. Accordingly, this portion of the appeal is denied.

Special Transfers

The appellant's provider requested 10 X 4 X 7 for assistance with transfers. The provider noted that she needs "maximum assistance for wheelchair mobility when fatigued; dependent for Hoyer lift transfers from bed or recliner to wheelchair and return, for boost/bolstering/off-loading both lower extremities due to non-use of lower extremities, limited use of both upper extremities and generalized weakness/fatigue." MassHealth modified the request for assistance with special transfers to 10 X 2 X 7. The appellant agreed that 10 X 2 X 7 is adequate time for assistance with special transfers. Accordingly, this portion of the appeal is denied.

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

Order for MassHealth

Release aid pending. In the area of bladder care, approve 5 X 6 X 7 plus an additional 20 X 1 X 1. In the area of bowel care, approve 25 X 2 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