

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Dismissed in part

Appeal Number: 2302705

Decision Date: 5/12/2023

Hearing Date: 05/08/2023

Hearing Officer: Thomas Doyle

Record Open to:

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary Jo Elliot, R.N.

Interpreter:



*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; Dismissed in part	Issue:	PA-PCA Services
Decision Date:	5/12/2023	Hearing Date:	05/08/2023
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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

Through a notice dated March 28, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on April 2, 2023. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant appeared telephonically and was pro se. MassHealth was represented by a registered nurse who testified telephonically to the following: the appellant's primary diagnosis is spinal nerve damage, paresthesia and bulging discs. Appellant also has chronic pain through spinal cord. She

has limited range of motion in right hand and no range of motion in left hand and cannot grasp. Appellant has a neuro stimulator implant to help relieve some of her incontinence, with the PCA charging the battery daily. Appellant has post traumatic stress disorder due to child abuse years ago and her overall health. She suffers from epilepsy and seizure disorder. (Ex. 4, p.9; Testimony). Post hearing, appellant submitted a letter from her doctor and it was marked as Exhibit 7. The doctor noted appellant's primary diagnosis is movement disorder with history of multiple falls, overactive bladder, mixed urinary incontinence and it was noted appellant has a sacral neuromodulator in place. (Ex. 7).

Center for Living and Working, the appellant's Personal Care Management ("PCM") Agency, submitted a request on behalf of the appellant for 69 hours and 30 minutes per week, and 2 hours per night. MassHealth modified the request to 63 Hours and 15 minutes per week and approved the 2 hours per night. (Testimony; Ex. 4, p. 3). Specifically, there were four modifications to the Activities of Daily Living (ADLs): Mobility, (physical assist), Passive Range of Motion, (PROM), Grooming and Toileting. There was one modification to Instrumental Activities of Daily Living (IADLs): Medical Transportation. (Testimony; Ex. 4, pages 12-34).

After hearing testimony at hearing, MassHealth restored the time requested for: Mobility (physical assist) (8 episodes a day); Grooming (142 minutes a week).¹ (Testimony; Ex. 4, pp. 17-18). The remaining tasks in dispute are Passive Range of Motion where the PCM agency requested 10 minutes for each extremity, upper and lower. MassHealth modified this to 15 minutes for both upper extremities and 15 for both lower extremities. (Testimony; Ex. 4, p. 14). Toileting (Bladder care) was requested for 15 minutes an episode, 10 times a day, 7 days a week; Toileting (Bowel care) was requested for 15 minutes an episode, 7 times a day, 7 days a week. MassHealth modified Toileting and agreed to 15 minutes an episode for bladder and bowel, each 7 days a week but modified the episodes a day to a total of 15 minutes. (Testimony; Ex. 4, p. 21). Regarding the IADL of Medical Transportation, the parties agreed that time for the urologist was mistakenly counted twice. (Ex. 4, p. 34; Testimony). One of those calculations was removed and the parties agreed on 38 minutes a week, day/evening hours, for this task.

Appellant testified on her own behalf. She said she is a high fall risk and needs assistance at all times. Her left arm and hand are of no use and are against her body. She uses her right for everything. She said her right ankle is swollen and there is no movement or flexibility to it. All her weight is on her left foot and it is swollen as well. She testified her knees and ankles give way when she ambulates. Her incontinence has increased. She wears Depends but needs the time for toileting. She acknowledged she wears a stimulator for overactive bladder. (Testimony).

Findings of Fact

¹ The MassHealth nurse testified that the modification for Grooming noted in Exhibit 4 was not present on the Notice she had before her. Therefore, she approved the requested time for this task.

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

1. The appellant is a female in her early fifties who lives in the community. (Testimony; Ex. 4, p. 3).
2. The appellant's chronic condition is spinal nerve damage, paresthesia and bulging discs. (Ex. 4, p. 8). Appellant also has movement disorder with history of multiple falls, overactive bladder, mixed urinary incontinence and has a sacral neuromodulator in place. (Ex. 7).
3. Center for Living and Working, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf, seeking 69 hours, 30 minutes of PCA assistance per week (day/evening hours). Two hours of nighttime service was approved. (Testimony; Ex. 4, p. 3).
4. By notice dated March 28, 2023, MassHealth modified the requested time to 63 hours, 15 minutes of day/evening PCA assistance per week, for services for one year. (Testimony; Ex. 4, p. 11-34).
5. There is aid pending. (Ex. 4; Testimony).
6. MassHealth modified the ADL's of Mobility, PROM, Grooming and Toileting. (Testimony; Ex. 4, p. 3, 17); MassHealth modified the IADL of Medical Transportation. (Testimony; Ex. 4, p. 34).
7. MassHealth approved the requested times for the ADL tasks of Mobility and Grooming. The parties agreed to the modification by MassHealth to Medical Transportation. (Testimony).

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

130 CMR 450.204.

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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 PCA 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 PCM 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 PCA 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.

MassHealth approved the requested times for the ADL tasks Mobility and Grooming. (Testimony). As to that portion of the appeal, there is no remaining dispute to address so this appeal is DISMISSED IN PART per 130 CMR 610.051. The parties agreed on the MassHealth modification for the IADL of Medical Transportation because the time for the urologist was counted twice. As to this portion of the appeal, there is no remaining dispute to address so this appeal is DISMISSED IN PART per 130 CMR 610.051. That leaves the ADLs of PROM and Toileting to be resolved. With the above regulations in mind, the analysis will turn to the disputed activities.

PROM:

Appellant's PCM agency requested 10 minutes for each extremity, upper and lower. MassHealth modified this to 15 minutes for both upper extremities and 15 for both lower extremities. (Testimony; Ex. 4, p. 14). The MassHealth nurse testified they look at standard of care, areas that might not need PROM, diagnosis, and previous PROM. She also said that appellant had previous requests for prior authorizations for PROM approved. Other reasons for MassHealth modification was appellant does ambulate, can use upper extremities and has a neurostimulator. These were the reason MassHealth modified the total time from 40 minutes to 30 minutes. (Testimony). Appellant testified she has no use of her left arm and hand and they are against her body. She uses her right hand for everything, including using her walker, and as a result, the fingers on her right hand are twisted and this makes it difficult to grasp. Appellant said she can ambulate but her right ankle is swollen, has no flexibility and is painful. It takes a lot of time to get around. She testified that her knees and ankles can give way when she ambulates. This correlates with her doctor's note that appellant has a history of falls. (Ex. 7). As a result, all her weight is on her left foot, which causes it to swell because it is doing the work of both feet. Contrary to the MassHealth testimony that the neurostimulator would mitigate the need for more PROM, appellant stated that the stimulator's use is only "to not feel pain." (Testimony). After review of the letter from appellant's doctor, I do not give it much weight. The doctor writes it is medically necessary appellant have the requested hours for PCA services. However, the letter is lacking in specificity on the allotment of those hours and why they are necessary. Notwithstanding this lack of specificity, I find appellant has met her burden and her request for PROM time is approved. MassHealth stated previous prior approvals for PROM were approved. Appellant's testimony shows her upper and lower extremities need PROM treatment. The nonuse of her left arm and hand have caused an extra burden to other extremities.

This can lead to possible falls. Appellant testified that she is a high fall risk and needs assistance at all times and her doctor confirms that appellant has a history of multiple falls. (Ex. 7).

Toileting:

Appellant's level of assist for this task is maximum. (Ex. 4, p. 21). The PCM agency requested 15 minutes an episode, 10 episodes a day, 7 days a week for Bladder care and 15 minutes an episode, 7 episodes a day, 7 days a week for Bowel care. (Ex. 4, p. 21). MassHealth modified only the number of episodes a day to a total of 15. (Testimony). Appellant requested a total of 17 episodes a day, for Bladder and Bowel. (Ex. 4, p. 21).² Evidence shows appellant has an excessive overactive bladder and due to her taking Lasix she is constantly incontinent throughout the day. (Ex. 4, p. 21). Appellant testified that her incontinence is "more than before." (Testimony). She said she is having issues with her bladder stimulator in that it is set at maximum and not doing its job. She has to sit or lay sideways because of the pain the stimulator causes. Appellant has shown her requested time for Bladder and Bowel care is reasonable and has met her burden. Her incontinence is worse and is constant throughout the day. The time requested by appellant is medically necessary to "prevent the worsening of, alleviate, correct, or cure conditions in the member that . . . cause suffering or pain." (130 CMR 450.204 (A)(1)). Appellant's requested time for Bladder and Bowel care is approved.

Based on the above, the appeal is APPROVED IN PART and DISMISSED IN PART.

Order for MassHealth/Optum

Within 30 days of the date of this decision:

1. Remove the Aid Pending protection of PCA benefits.
2. Adjust the approved PCA time in accordance with this decision to allow for:
PROM: Requested time if approved. Upper Extremity Left, 10 minutes an episode, 1 episode a day, 7 days a week and the same for Upper Extremity Right; Lower Extremity Left and Lower Extremity Right.
Toileting: Requested time is approved. Bladder care at 15 minutes an episode; 10 episodes a day, 7 days a week; Bowel care at 15 minutes an episode, 7 episodes a day, 7 days a week.

Both tasks for the remainder of the current PA period.
3. As MassHealth agreed to the requested time for Mobility and Grooming, the portion of the appeal dealing with these tasks is dismissed. As the parties agreed to the hours for Medical Transportation, the portion of the appeal dealing with this task is dismissed.

² Appellant's request for Bladder care adds up to 1,050 minutes a week and her request for Bowel care adds up to 735 minutes a week, totaling 1735 minutes a week. MassHealth's only modification being the number of episodes a day, 15, adds up to a total of 1,575 minutes a week.

4. Send notice to Appellant and her PCA provider of the amount of approved time in writing.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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