

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Dismissed in part

Appeal Number: 2303289

Decision Date: 5/26/2023

Hearing Date: 5/23/2023

Hearing Officer: David Jacobs

Appearances for Appellant:



, Appellant's mother

Appearances for MassHealth:

Mary-Jo Elliot, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

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| Appeal Decision: | Approved in part; Dismissed in part | Issue: | Prior Authorization (PCA Services) |
| Decision Date: | 5/26/2023 | Hearing Date: | 5/23/2023 |
| MassHealth Rep: | Mary-Jo Elliot, RN | Appellant Rep: | Appellant's Mother |
| Hearing Location: | Board of Hearings (Remote) | Aid Pending: | No |

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated March 22, 2023, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410) (Exhibit 1). The appellant filed a timely appeal on April 21, 2023. (130 CMR 610.015(B)). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a female in her 30s whose provider, Northeast Arc, submitted an initial request for PCA services on her behalf. The record reflects that the appellant has a primary diagnosis of cerebrovascular accident and stroke (Exhibit 5, pg. 9). On March 7, 2023, MassHealth received an initial prior authorization request for PCA services. The appellant was represented by her mother. The appellant seeks PCA services in the amount of 39.25 hours day/evening hours per week, and 2 night hours per week. On March 22, 2023, MassHealth modified the request and authorized 28.25 hours day/evening hours per week, and 2 night hours per week. Three modifications were made by MassHealth.

1. Mobility (Exhibit 5, pg. 12-13)

The parties were able to resolve the dispute regarding one mobility task (room to room transfers). The appeal is therefore dismissed as to this issue. The parties were unable to resolve disputes regarding the time for PCA assistance with one other mobility task (stairs).

For the mobility task of stairs, the evaluating nurse's notes indicate that: "Consumer needs assistance with mobility due to ataxia, spasticity, consumer has limited range of motion, has an unsteady gait, experience pain in her legs and shoulder. Consumer ambulates with a walker" (Exhibit 5, pg. 13). An additional note was included on referral that states "The consumer has recently suffered a fall and has a broken clavicle. FALL RISK! Consumer must navigate stairs outside, needs assistance in/out" (Exhibit 5, pg. 48). The appellant requested time for PCA assistance with stairs was for 5 minutes, 2 times a day, 7 days a week. The request was modified by MassHealth to give no time for this task. The MassHealth representative testified that due to the note "consumer must navigate stairs outside" it is presumed this assistance is for medical transportation for the appellant to traverse stairs while outside the home. However, the appellant did not request any time for medical transportation and the nurse reviewer is unable to presume medical necessity to approve this time without appropriate documentation for medical transport. The appellant's mother responded that her daughter is unsteady on her feet and is at high risk falling so she must rely on a wheelchair to get around. Furthermore, she must be taken to medical appointments every day and helped up and down stairs in places where there is no wheelchair access.

2. Bathing (Exhibit 5, pgs. 15-16)

The parties were able to resolve the dispute regarding the bathing task (time for PCA assistance with a bath and quick wash). The appeal is therefore dismissed as to this issue.

3. Number of PCA days given (Exhibit 5, pg. 3)

The parties were able to resolve the dispute regarding the slight increase in the number of days for PCA services given due to 2024 being a leap year. The appeal is therefore dismissed as to this issue.

Findings of Fact

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

1. The appellant is female in her 30's with primary diagnosis of cerebrovascular accident and stroke.
2. The evaluating notes state that the appellant has an unsteady gait and has a high risk of falling due to her stroke.
3. On March 7, 2023, the appellant submitted an initial request for PCA services in the amount of 39.25 hours day/evening hours per week and 2 night hours per week.
4. On March 22, 2023, MassHealth modified the request and authorized 28.25 day/evening hours per week and 2 night hours per week.
5. At hearing, the parties were able to resolve disputes regarding time for PCA assistance with one mobility task for room-to-room transfer, the bathing task, as well as the number of PCA days given.
6. The parties were unable to resolve the dispute regarding one other mobility task for stairs.
7. The appellant requested time for PCA assistance with stairs as follows: 5 minutes, 2 times a day, 7 days a week; MassHealth did not authorize any time for PCA assistance with stairs.
8. The evaluating nurse notes suggest that the assistance with stairs was intended for help with stairs outside the home.
9. The appellant did not request any time for medical transportation.
10. The appellant is unsteady on her feet and at risk of falling. Therefore, she usually uses a wheelchair to get around.
11. The appellant attends medical appointments every day and sometimes requires help with stairs when there is no wheelchair access.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 or 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 MassHealth as being instrumental to the health care of the member.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to [MassHealth]. . . .

Mobility (stairs)

The appellant disputes MassHealth’s modification of the time requested for PCA assistance with the mobility task of assistance with stairs.

The appellant has demonstrated that 5 minutes, 2 times a day, 7 days a week for assistance with mobility on outdoor stairs is medically necessary. MassHealth modified the request on the basis that the stairs task is for outdoor stairs which falls under the category of medical transportation. However, because the appellant did not request any time for medical transportation, she did not include any medical necessity documentation for medical transportation and the reviewing nurse is unable to approve this time for stairs without such documentation. The appellant’s mother testified that her daughter relies on a wheelchair to get around as she is unsteady on her feet and is at high risk of falling. Despite this fact, she must attend multiple medical appointments a day which sometimes involve needing help up and down stairs when there is no wheelchair access. This testimony is a reasonable basis for a finding of medical necessity. The notes on pgs. 13 and 48 of Exhibit 5 reference the appellant’s difficulty with walking and her high risk of falling. If the appellant is required to attend medical appointments every day, it is reasonable that she would encounter stairs at least two times where it would be medically necessary for her to receive assistance due to her high risk of falling. Therefore, this portion of the appeal is approved.

Order for MassHealth

Rescind notice on appeal, and approve time requested for PCA assistance with mobility on the stairs.

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 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.

David Jacobs
Hearing Officer
Board of Hearings

cc: Optum