

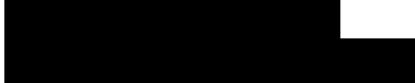
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2304232
Decision Date:	8/4/2023	Hearing Date:	06/23/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:




Appearance for MassHealth:

Mary-Jo Elliott, RN
Lisa Russell, RN - observing



*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:	Prior Authorization – PCA
Decision Date:	8/4/2023	Hearing Date:	06/23/2023
MassHealth's Rep.:	Mary-Jo Elliott, RN; Lisa Russell, RN	Appellant's Rep.:	
Hearing Location:	Remote	Aid Pending:	No

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 May 15, 2023, MassHealth modified the appellant's request for personal care attendant services, allowing fewer hours than were requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on May 23, 2023. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining that some of the appellant's requested time is non-compensable as taking longer than usual or duplicative of other time allowed.

Summary of Evidence

On or around May 3, 2023, the appellant's personal care management ("PCM") agency submitted a prior authorization reevaluation requesting 67 hours and 45 minutes (4,051 minutes per week) of day/evening personal care attendant ("PCA") hours and two hours per night. The prior authorization period for this request ran from May 27, 2023, through May 26, 2024. The appellant is a very elderly adult who lives with an adult child. Her primary diagnosis is dementia, and she has a history of several transient ischemic attacks (strokes). She has muscle pain and stiffness in her back, neck, and all joints due to rheumatoid and osteo- arthritis. She now requires two people to assist her with ambulation using a gait belt and a walker. She has difficulty standing independently due to forward flexion and curvature of her upper torso. She is dependent on a wheelchair for mobility. Her confusion continues to increase, along with generalized weakness, decreased strength, rigidity, decreased balance, fine motor deficits, and poor vision. She also suffers from irritable bowel syndrome, alternately constipation and diarrhea, urinary incontinence, cystocele, anxiety, insomnia, and other ailments. (Exhibit 5, pp. 8-9.)

MassHealth made five modifications to the appellant's requested services and authorized 58 hours and 30 minutes (3,498 minutes per week) of day/evening PCA services. All nighttime hours were approved as requested. MassHealth reduced:

- the time for Mobility from seven minutes, eight times per day (392 minutes per week) to five minutes, eight times per day (280 minutes per week);
- the time for Dressing from 20 minutes, twice per day (280 minutes per week) to 20 minutes, once per day (140 minutes per week);
- the time for Undressing from 15 minutes, twice per day (210 minutes per week) to 15 minutes, once per days (105 minutes per week);
- the time for Bladder Care from 15 minutes, eight times per day (840 minutes per week) to 12 minutes, eight times per day (672 minutes per week); and
- the time for Bowel Care from 17 minutes, twice per day (238 minutes per week) to 15 minutes, twice per day (210 minutes per week).

During the hearing, the appellant's representatives explained that the appellant is a very frail woman. The appellant is always at the very tail of a bell curve for movement speed because she will be hurt if she moves quickly. She has developed pressure sores since the assessment, and her condition has generally worsened. She shuffles when she walks and moving results in exhaustion, but her caregivers keep her moving to prevent her from getting sores and maintain what little mobility she still has. Based upon this testimony, MassHealth's representative agreed to restore the time request for Mobility (112 minutes per week).

Regarding Dressing and Undressing, MassHealth's representative explained that "dressing" refers to the entire process of getting changed from night clothes into day clothes and "undressing" refers to the process of getting changed from day clothes into night clothes. Therefore, only one instance of task is typically allowed by MassHealth. The appellant's representatives responded that they requested additional instances of changing clothes because of the appellant's incontinence of bowel and bladder, which necessitates her being changed throughout the day. MassHealth's representative noted that incontinence changes do not typically require an entire outfit change and time was requested for incontinence changes under Bladder and Bowel Care.

The appellant's representatives testified that the appellant does occasionally require a complete outfit change because of bowel incontinence. Due to her medical conditions, she may uncontrollably defecate while being lowered onto the toilet, and she sometimes leans back while on the toilet soiling all her clothing. However, the appellant's representatives also testified that the requested 15 minutes for Bladder Care and 17 minutes for Bowel Care was inclusive of the time needed to clean the appellant on the toilet and change any soiled clothing. Based upon this testimony, MassHealth's representative agreed to restore all the requested time for Bladder and Bowel Care (168 and 28 minutes per week).

The appellant's skills trainer testified that when she filled out the request, she understood Dressing to be the act of donning clothing and undressing to be the act of doffing clothing. Because a person needs to get undressed and dressed each time they change clothes, she believed it was appropriate to request two instances of Dressing and Undressing. MassHealth's representative repeated that these categories of assistance were meant to cover the act of changing at the beginning of the day and at the end of it.

The appellant's representatives were frustrated because of the way in which MassHealth calculates time for the PCA program. The appellant's daughter understood that MassHealth can cover up to 12 hours per day for PCA services, and they wanted coverage for the entire day the appellant needs help at all hours of the day. She explained that there are five family members who provide care to the appellant, and the youngest of them is ■ years old. They do not want her to go to a nursing home, but everything the appellant does takes so very long because of her pain and frailty.

Findings of Fact

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

1. The appellant is a very elderly adult with a primary diagnosis of dementia. Other relevant diagnoses include a history of several transient ischemic attacks, muscle pain and stiffness due to rheumatoid and osteo- arthritis, irritable bowel syndrome, constipation/diarrhea, urinary incontinence, cystocele, anxiety, insomnia, amongst other conditions. She requires two people to assist her with ambulation using a gait belt and a walker and has difficulty standing on her own. (Exhibit 5, pp. 8-9.)

2. On or around May 3, 2023, the appellant's PCM agency submitted a prior authorization reevaluation requesting 67 hours and 45 minutes of day/evening PCA hours and two hours per night. The prior authorization period for this request ran from May 27, 2023, through May 26, 2024. (See Exhibit 5.)
3. MassHealth made five modifications to the appellant's requested services and authorized 58 hours and 30 minutes of day/evening PCA services. All nighttime hours were approved as requested. The modifications were to Mobility, Dressing, Undressing, Bladder Care, and Bowel Care. (Exhibit 1.)
4. MassHealth restored all time requested for Mobility, Bladder, and Bowel Care. This restored 308 minutes per week. (Testimony by MassHealth's representative; see Exhibit 5.)
5. The appellant requested 20 minutes twice per day for Dressing and 15 minutes twice per day for Undressing. (Exhibit 5, p. 19.)
6. MassHealth allowed only one instance of each Dressing and Undressing. MassHealth considers Dressing to encompass the entire act of changing at the beginning of the day from night clothes into day clothes and Undressing to be the act of changing from day clothes into night clothes. MassHealth already allowed time for "additional clothing changes 1-2 times daily" due to incontinence in the time allowed for Bladder and Bowel Care. (Testimony by MassHealth's representative; Exhibit 5, p. 21.)
7. The appellant's daughter testified that the additional instance for Dressing and Undressing was due to incontinence care. The appellant's skills-trainer testified that it was because she felt that a person gets both dressed and undressed in both the morning and at night when changing their clothes. (Testimony by appellant's representatives.)

Analysis and Conclusions of Law

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

(130 CMR 422.410(A).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth also limits what services it covers within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers “physically assisting” members with their ADLs or the “activity time” of “providing assistance” with IADLs. (See 130 CMR 422.410(A); 422.411(A).) This means that MassHealth does not cover time downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

- (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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412.)

This appeal is DISMISSED in part with regards to Mobility, Bladder, and Bowel Care. MassHealth restored in full all time requested in, and there is no longer a MassHealth action to be reviewed through a fair hearing decision. (130 CMR 610.051(B).) This increases the originally allowed time by 308 minutes per week.

The remaining issue is whether second instance of Dressing and Undressing is compensable under MassHealth's rules. MassHealth's representative testified that it views the time for Dressing and Undressing as encompassing the entirety of the morning clothing change and evening clothing changes. Furthermore, MassHealth restored the requested time for Bladder and Bowel care only after the appellant's representatives testified that the time was needed to facilitate clothing changes due to incontinence. The appellant's representatives provided differing explanations as to why two iterations of Dressing and Undressing were requested. One of the reasons given related to the need to change clothing due to incontinence. Time was already allowed under Bladder and Bowel care for clothing changes, therefore, the second clothing change requested under Dressing and Undressing is duplicative. This appeal is DENIED in part with regards to Dressing and Undressing.

Order for MassHealth

Restore the time agreed to for Mobility, Bladder, and Bowel Care as of May 27, 2023.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215
Appellant's Rep: GAIL HOGUE, 114 Grove St., Millville, MA 01529