

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part, Denied in part	Appeal Number:	2304410
Decision Date:	09/05/2023	Hearing Dates:	07/06/2023 and 08/07/2023
Hearing Officer:	Paul C. Moore		

Appellant Representatives:



MassHealth Representative:

Mary-Jo Elliott, R.N., clinical appeals reviewer,
Optum (by telephone)

Spanish Interpreters:

Zully (Day One) and Celco (Day Two)



*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 Services
Decision Date:	09/05/2023	Hearing Dates:	07/06/2023 and 08/07/2023
MassHealth Rep.:	Mary-Jo Elliott, R.N.	Appellant Reps.:	Pro se, with advocate and PCA
Hearing Location:	Remote		

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 April 4, 2023, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services from the requested 95 hours, 30 minutes of day/evening assistance per week, and five hours per night, every night, to 82 hours of day/evening assistance per week, and three hours per night, every night (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on May 30, 2023 (130 CMR 610.015; Exhibit 2). Modification of a PA request is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

Was MassHealth correct, pursuant to 130 CMR 422.410(A), (B) and (C), and 130 CMR 450.204(A), to modify the appellant's PA request for PCA assistance?

Summary of Evidence

The MassHealth representative, who is a Registered Nurse and clinical appeals reviewer with Optum, testified by telephone that the appellant is under age 65 and lives in the community. Her medical diagnoses include a spinal cord injury from C1 to C4 following a motor vehicle accident, insulin-dependent diabetes, spasms, and seizures.¹ She has a colostomy and a tracheostomy, and is ventilator-dependent. The MassHealth representative testified that the Boston Center for Independent Living (“BCIL” or “PCM agency”), a Personal Care Management (PCM) services agency, submitted a re-evaluation request to MassHealth on the appellant’s behalf on March 16, 2023, seeking 95 hours, 30 minutes of day/evening PCA assistance for the appellant, and five hours of PCA assistance per night, every night. Via notice dated April 4, 2023, MassHealth modified the requested PCA assistance time to 82 hours of day/evening assistance per week, and three hours per night, every night. The PA request at issue covers the time period April 12, 2023 through April 11, 2024 (Testimony, Exh. 4).

The first modification about which the MassHealth representative testified was PCA assistance with bladder care, an activity of daily living (ADL).² BCIL requested, on the appellant’s behalf, 25 minutes per day, three times a day, every day and also requested 35 minutes per day, two times day per week, one day per week (Testimony). Notes in the PCM agency evaluation state:

PCA changes urostomy bag, cleans site and reapplies new bag. PCA empties urostomy bag, cleans bag and reapplies. PCA applies night bags and changes to day bag, empties, cleans the bag, disposes of waste. . . .

(Exh. 4, p. 21)

MassHealth modified requested PCA assistance time for the appellant’s bladder care to eight minutes, five times per day, seven days per week for emptying and reapplying the urostomy bag (Testimony).

The appellant testified by telephone through an interpreter, and with the assistance of an advocate from BCIL, that frequently, when the urostomy bag is being changed, she has bladder spasms and becomes incontinent. The appellant’s PCA testified that she washes the urostomy bag once a day, and empties the bag approximately four times per day. She testified that this process, all together, takes 20 to 25 minutes per episode. In response to this testimony, the MassHealth representative testified that MassHealth will authorize an additional twenty minutes, once per day, seven days per week, in addition to the time already authorized by MassHealth for assistance

¹ C1 to C4 refers to the cervical vertebrae.

² “Activities of daily living” is defined at 130 CMR 422.402 as those specific activities described in 130 CMR 422.410(A) and in the Contract for Personal Care Management (PCM) Services. Such activities are performed by a personal care attendant (PCA) to physically assist a member with mobility, taking medications, bathing or grooming, dressing, passive range of motion exercises, eating, and toileting.

with the appellant's bladder care. The appellant and her advocate agreed that this additional PCA assistance time is acceptable.

Next, the MassHealth representative testified that BCIL requested PCA assistance time with the appellant's bowel care, in the amounts of thirty minutes, twice a day, seven days a week, and an additional five minutes, twice a day, seven days per week. Notes in the PCM agency evaluation state: "PCA changes colostomy bag, cleans site, and reapplies new bag. PCA empties colostomy bag" (Exh. 4, p. 21). MassHealth modified requested PCA assistance time for the appellant's bowel care to 30 minutes, once a day, two times a week, and to five minutes, two times a day, seven days a week (Testimony, Exh. 4). The MassHealth representative testified that generally, a colostomy bag is not changed twice per day.

One of the appellant's PCAs, who typically works with the appellant for four hours during the day, testified that the colostomy pouch is removed, emptied, and reapplied twice per day. The colostomy bag wafer is not changed twice a day. The appellant's PCA stated that this process takes about fifteen minutes per occurrence. The colostomy is fully changed (including changing the wafer) every two days. In response to this testimony, MassHealth agreed to authorize 15 minutes, two times a day, seven days a week for removing, emptying and reapplying the colostomy bag, and also 30 minutes, once a day, four days a week for fully changing the colostomy bag. The appellant and her advocate agreed that this allocation of PCA assistance time is acceptable to the appellant (Testimony).

Next, for the ADL of oral suctioning of the appellant, BCIL requested PCA assistance at night (midnight to 6 am) for eight minutes, six times, every night. MassHealth modified this request to five minutes, six times per night, every night. The appellant agreed that this allocation of PCA assistance time is acceptable to her (Testimony).

For the ADL of eating, BCIL requested five minutes of PCA assistance, six times a night, every night for offering the appellant fluids. MassHealth modified requested time in this area to five minutes of assistance, every night, three times per night. The appellant testified that her PCA gives her fluids four times per night, and that she needs water to swallow her prescribed medications at night. She testified that she takes one oral medication twice at night, and a second medication once at night. In response to this testimony, MassHealth agreed to authorize five minutes of PCA assistance, four times per night, every night for this ADL. The appellant and her advocate agreed that this complement of time is acceptable to the appellant (Testimony).

Next, the MassHealth representative testified that BCIL requested, at night, ten minutes, six times per night, every night of PCA assistance with the appellant's cough-assist machine. MassHealth modified requested time in this area to ten minutes, twice per night, every night of PCA assistance with the cough-assist machine. The appellant and her advocate agreed that this amount of PCA assistance time is acceptable (Testimony, Exh. 4).

Next, according to the MassHealth representative, BCIL requested, on the appellant's behalf, five minutes, three times per night, every night of PCA assistance for cleaning the appellant's ventilator condenser. MassHealth modified requested time in this area to zero. In addition, BCIL requested two minutes, six times per night, every night for the PCA to check the ventilator settings. Again, MassHealth did not authorize any PCA assistance time for this activity. The MassHealth representative stated that a representative from the ventilator company, not the PCA, would be responsible for cleaning the condenser and verifying the ventilator settings.

The appellant testified that the ventilator company representative showed the appellant's PCAs how to check the ventilator settings, and the PCAs now do these checks on their own. The daytime PCA testified that when the appellant is transferred from the ventilator to the cough-assist machine, sometimes the PCA will "accidentally" hit a button on the ventilator. The PCA will subsequently check whether the ventilator settings are correct before the appellant is put back on the ventilator (Testimony).

With regard to cleaning the ventilator condenser, the MassHealth representative testified that it is a bottle that is "emptied infrequently." The appellant's PCA did not know what the ventilator condenser is (Testimony).

The appellant's PCA testified that a representative from "Rotech" trained her how to check the settings on the ventilator. At night, the appellant is transferred from the ventilator to a diaphragm pacer. Also, the nighttime PCAs (not the PCA who testified at hearing) are trained to check these settings. The appellant's PCA testified that at times after the appellant was suctioned at night, the nighttime PCAs have accidentally hit a button on the ventilator. The appellant's PCA testified that the PCAs have made errors in the ventilator settings. There are 21 buttons on the ventilator. The button settings all control the ventilator air flow, are written on a piece of paper, and always available to the PCAs, according to the appellant (Testimony).

The MassHealth representative testified that only a ventilator company representative, a skilled person (such as a nurse), or the appellant herself should be adjusting the ventilator settings. The appellant testified that she knows the ventilator settings, and directs the PCAs to adjust the settings as appropriate. She cannot adjust the settings herself because she is paralyzed (Testimony).

The appellant is removed from the ventilator only when the cough-assist machine is used, or when she is suctioned. The appellant testified that PCA time for checking the ventilator settings was authorized by MassHealth during the Covid-19 public health emergency (Testimony).³

Finally, for the ADL of repositioning the appellant at night, BCIL requested, on the appellant's behalf, eight minutes, five times per night, every night of PCA assistance. The MassHealth representative testified that the standard of care for a member who is unable to move on her

³ The MassHealth representative was unable to corroborate this testimony.

own is to be repositioned every two hours at night. MassHealth therefore authorized eight minutes, three times per night, every night of PCA assistance for repositioning the appellant (Testimony, Exh. 1, Exh. 4).

The appellant testified that she is repositioned by her PCA four to five times every night. She testified that after receiving the Covid-19 vaccine, she has been unable to stay comfortable in one position for more than 90 minutes at a time, and she has frequent muscle spasms (Testimony).

In response to this testimony, MassHealth agreed to authorize eight minutes, four times per night, every night of PCA assistance for repositioning the appellant. The appellant and her advocate agreed that this amount of PCA time is acceptable to her.

Findings of Fact

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

1. The appellant is a MassHealth member under age 65 who lives in the community (Testimony).
2. The appellant's medical diagnoses include a spinal cord injury from C1 to C4 following a motor vehicle accident, insulin-dependent diabetes, spasms, and seizures. She has a colostomy and a tracheostomy, and is ventilator-dependent (Testimony, Exh. 4).
3. BCIL, a PCM agency, submitted a re-evaluation request to MassHealth on the appellant's behalf on March 16, 2023, seeking 95 hours, 30 minutes of day/evening PCA assistance for the appellant, and five hours of PCA assistance per night, every night (*Id.*).
4. Via notice dated April 4, 2023, MassHealth modified the requested PCA assistance time to 82 hours of day/evening assistance per week, and three hours per night, every night (Exh. 1).
5. The PA request at issue covers the time period April 12, 2023 through April 11, 2024 (Exh. 4).
6. BCIL requested, on the appellant's behalf, 25 minutes per day, three times a day, every day and also requested 35 minutes per day, two times day per week, one day per week for the appellant's bladder care (Testimony).
7. MassHealth modified requested PCA assistance time for the appellant's bladder care to eight minutes, five times per day, seven days per week for emptying and reapplying the urostomy bag (Exh. 1).
8. At hearing, MassHealth authorized an additional twenty minutes, once per day, seven days per week, in addition to the time already authorized by MassHealth for assistance with the appellant's bladder care (Testimony).

9. The appellant agreed that this additional bladder care PCA assistance is acceptable to her.
10. BCIL requested PCA assistance time with the appellant's bowel care, in the amounts of thirty minutes, twice a day, seven days a week, and an additional five minutes, twice a day, seven days per week (Exh. 4).
11. MassHealth modified requested PCA assistance time for the appellant's bowel care to 30 minutes, once a day, two times a week, and to five minutes, two times a day, seven days a week (Testimony, Exh. 4).
12. At hearing, MassHealth agreed to authorize 15 minutes, two times a day, seven days a week for removing, emptying and reapplying the colostomy bag, and also 30 minutes, once a day, four days a week for fully changing the colostomy bag (Testimony).
13. The appellant agreed that this amount of PCA assistance time is acceptable to her (Testimony).
14. BCIL requested PCA assistance at night (midnight to 6 am) for eight minutes, six times, every night for oral suctioning of the appellant (Exh. 4).
15. MassHealth modified this request to five minutes, six times per night, every night for assistance with oral suctioning (Exh. 1).
16. The appellant agreed that this amount of PCA assistance with oral suctioning at night is acceptable to her (Testimony).
17. BCIL requested five minutes of PCA assistance, six times a night, every night for offering the appellant fluids (Exh. 4).
18. MassHealth modified requested time in this area to five minutes of assistance, every night, three times per night (Testimony, Exh. 1).
19. At hearing, MassHealth agreed to authorize five minutes of PCA assistance, four times per night, every night for this ADL (Testimony).
20. The appellant agreed that this complement of time for offering nighttime fluids is acceptable to her (Testimony).
21. BCIL requested, at night, ten minutes, six times per night, every night of PCA assistance with the appellant's cough-assist machine (Exh. 4).
22. MassHealth modified requested time in this area to ten minutes, twice per night, every night of PCA assistance with the cough-assist machine (Exh. 1).

23. The appellant agreed that this amount of nighttime PCA assistance time with the cough-assist machine is acceptable to her (Testimony).
24. BCIL requested, on the appellant's behalf, five minutes, three times per night, every night of PCA assistance for cleaning the appellant's ventilator condenser (Exh. 4).
25. MassHealth modified requested time in this area to zero (Exh. 1).
26. BCIL requested two minutes, six times per night, every night for the PCA to check the ventilator settings (Exh. 4).
27. Again, MassHealth modified PCA assistance time for this task to zero (Testimony).
28. MassHealth indicated only the appellant herself, a ventilator company representative, or a skilled person (such as a licensed nurse) can clean the condenser and can adjust the ventilator settings (Testimony).
29. The appellant's daytime PCA did not know what the ventilator condenser is (Testimony).
30. One of the appellant's PCAs was trained by a technician from "Rotech" on how to check the settings on the ventilator (Testimony).
31. The appellant has two other nighttime PCAs (Testimony).
32. After the appellant is switched from her ventilator to a cough-assist machine or to a diaphragm pacer, the PCAs check the ventilator settings before reattaching the ventilator (Testimony).
33. The appellant knows her ventilator settings, and the settings are written on a piece of paper and are available to the PCAs (Testimony).
34. There have been ventilator setting errors made by the PCAs at night when switching the appellant back onto the ventilator (Testimony),
35. For the ADL of repositioning the appellant at night, BCIL requested, on the appellant's behalf, eight minutes, five times per night, every night of PCA assistance (Exh. 1).
36. The standard of care for a member who is unable to move on her own is to reposition her every two hours at night (Testimony).
37. MassHealth therefore authorized eight minutes, three times per night, every night of PCA assistance for repositioning the appellant (Testimony, Exh. 1, Exh. 4).

38. At hearing, MassHealth agreed to authorize eight minutes, four times per night, every night of PCA assistance for repositioning the appellant (Testimony).

39. The appellant agreed that this amount of nighttime PCA assistance with repositioning is acceptable to her (Testimony).

Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (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; (2) the member's disability is permanent or chronic in nature; (3) the member 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 or grooming; (d) dressing or undressing; (e) range-of-motion exercises; (f) eating; and (g) toileting; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned instrumental activities of daily living.

Pursuant to 130 CMR 422.412, "Non-Covered 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, 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 EVV as required by the MassHealth agency.

(Emphasis added)

Pursuant to 130 CMR 450.204(A), MassHealth 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

Here, there is no dispute that the appellant, due to her permanent and chronic disability, needs PCA services.

Bladder Care, Bowel Care, Cough-Assist Machine (Night), Offering Fluids (Night), Oral Suctioning (Night) and Repositioning (Night)⁴

At hearing, MassHealth agreed to authorize the following amounts of PCA assistance:

⁴ 130 CMR 422.402 defines "Night Hours" as 12 am to 6 am.

Bladder care: Eight minutes, five times per day, seven days per week and an additional twenty minutes, once per day, seven days per week;

Bowel care: 15 minutes, two times a day, seven days a week, and thirty minutes, once per day, two days per week;

Cough-Assist Machine: ten minutes, twice per night, every night;

Oral Suctioning: five minutes, six times per night, every night;

Offering Fluids: five minutes of PCA assistance, four times per night, every night;

Repositioning: eight minutes, four times per night, every night.

The appellant agreed to these amounts of PCA assistance. Therefore, these portions of the appeal are DISMISSED.

Cleaning the Ventilator Condenser/Checking Ventilator Settings

BCIL requested, on the appellant's behalf, five minutes, three times per night, every night of PCA assistance for cleaning the appellant's ventilator condenser. MassHealth modified requested time in this area to zero. In addition, BCIL requested two minutes, six times per night, every night for the PCA to check the ventilator air-flow settings. Again, MassHealth did not authorize any PCA assistance time for this activity.

At hearing, one of the appellant's PCAs, who typically works during the day, testified that she did not know what was meant by "condenser." The appellant's nighttime PCAs did not testify at hearing. The appellant's daytime PCA testified she understands the ventilator settings and how to check them, and was trained on how to do this. There is no evidence that the appellant's nighttime PCAs have any such similar training.

With regard to the ventilator settings, which control air flow to the appellant, the evidence shows that there are times when the appellant is removed from the ventilator and placed on a cough-assist machine and/or a diaphragm pacer. The appellant's daytime PCA testified that sometimes, when the appellant is placed back on the ventilator, buttons on the ventilator are "accidentally" touched by the PCAs. She was aware of one such episode.

MassHealth credibly testified that only a ventilator technician, a skilled clinician, or the appellant herself can check and alter ventilator settings. The consequences of failing to ensure the right settings could be dire for the appellant.

Pursuant to 130 CMR 422.412(B), above, MassHealth does not cover PCA services if medical services are available from other MassHealth providers, such as physician or pharmacy. I

conclude that PCA services to check the ventilator condenser and to check the ventilator settings are not within the scope of a PCA's "unskilled" duties, and are to be performed by a nurse or other health care clinician.

Therefore, this portion of the appeal is DENIED.

Order for MassHealth

Rescind notice of April 4, 2023. Send the appellant a notice apprising her that for the PA period April 12, 2023 through April 11, 2024, she is eligible for 86 hours, 30 minutes per week of day/evening PCA assistance, and 3 hours, 30 minutes of PCA assistance at night, every night.

Send notice of implementation only; do not include appeal rights.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc:

cc: Optum appeals representative