



**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2304553
Decision Date:	9/28/2023	Hearing Date:	07/13/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

 via telephone
 via telephone

Appearance for MassHealth:

Mary Jo Elliott, RN via telephone



*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; Dismissed in part	Issue:	Personal Care Attendant (PCA) Prior Authorization (PA) Reevaluation, Over 65
Decision Date:	9/28/2023	Hearing Date:	07/13/2023
MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center		

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 23, 2023, MassHealth approved the appellant's PA reevaluation request for PCA services with modifications. (See 130 CMR 422.410 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on June 5, 2023. (See 130 CMR 610.015(B) and Ex. 2). MassHealth's modification of a PA request for PCA services provides valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's PA request for PCA services with modifications.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in determining that the PA request should be modified.

Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The PCM agency submitted a reevaluation PA request for PCA services for a total of 28 hours, 15 minutes of day and evening services per week and two hours per night. (Ex. 1; Ex. 5, pp. 4-6). In its submission, the PCM agency stated that the appellant is an individual who is over the age of 65. (Ex. 5, p. 8). The appellant's primary diagnosis is progressive multiple sclerosis manifesting itself in "extreme wkness,<[decreased] balance,stiffness, <ROM inhibit ability to do ADLs/IADLs." (Ex. 5, p. 9). In a notice dated May 23, 2023, MassHealth modified the PA request, and approved 27 hours, 15 minutes per week of day and evening services and two hours per night from June 24, 2023, through June 23, 2024. (Ex. 1; Ex. 5, pp. 4-6). MassHealth specifically modified the times requested for two activities of daily living (ADLs): shaving and medication prefill; and two instrumental activities of daily living (IADLs): laundry and PCA billing. (Ex. 1; Ex. 5, pp. 4-6).

During the hearing, and as a result of testimony from the appellant and her son, the MassHealth representative overturned the modifications made to laundry and PCA billing, approving the times the PCM agency requested. Therefore the appellant will receive 60 minutes per week for laundry and 10 minutes per week for PCA billing. (Ex. 5, pp. 30, 31). The remaining two modifications were discussed as follows.

1. Shaving

The PCM agency requested five (5) minutes per day for assistance with shaving. (Ex. 5, p. 17). MassHealth modified this to five (5) minutes but only two (2) times per week. (Ex. 1, p. 3; Ex. 5, p. 6). Citing 130 CMR 422.410(A)(3) and 450.204(A)(1), MassHealth stated that the reason for the modification was ". . . BECAUSE THE TIME YOU REQUESTED FOR ASSISTANCE WITH BATHING OR GROOMING IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS." (Ex. 1, p. 3; Ex. 5, p. 6).

The appellant and her son agreed that the appellant did not need to shave every day but did need to shave more than twice a week. The appellant's son stated that the appellant shaves at least four times per week. The appellant's son stated that the appellant requires a lot of assistance with this. The MassHealth representative asked what areas the appellant required assistance shaving. The appellant specified that it was her legs, arm pits, and personal areas. The appellant's son stated that if the shaving is left for longer, the appellant would more easily be nicked and bleed. The MassHealth representative offered an increase to three times per week. The appellant and her son seemed at first like they were willing to accept this but then stated that the appellant did really need to shave at least four times per week.

2. Medication prefill

The PCM agency requested 10 minutes per week for assistance with pre-filling the appellant's medication box. (Ex. 5, p. 23). The PCM agency's brief explanation for the need for this assistance was to "maintain accuracy". (Ex. 5, p. 23). MassHealth modified this to five minutes per week, stating that "THE TIME YOU REQUESTED FOR ASSISTANCE WITH MEDICATIONS OR ANOTHER HEALTH-RELATED NEED IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS" and citing to 130 CMR 422.410(A)(2) and 450.204(A)(1). (Ex. 1, p. 3; Ex. 5, p. 6).

The MassHealth representative stated that this ADL was for physically assisting the appellant in pre-filling a medication box. (Ex. 5, p. 23). In its submission, the PCM agency stated that the appellant was taking the following medications: Tylenol once per day; Bentyl once per day; Percocet four times per day; Klonopin twice per day; and Effexor twice per day. (Ex. 5, p. 9). The MassHealth representative stated that this was just five medications, and the frequency did not seem overly complicated. The appellant stated that she has also been prescribed eye drops. The MassHealth representative stated that the PCM agency did not list this amongst the appellant's medications, but that eye drops would not be included in a medication pre-fill.

The appellant stated that she did need assistance with filling the box because she had difficulty opening the bottles, and also has difficulty opening the medication box to pre-fill. The appellant's son stated that the appellant has other medications that she takes in addition to the five listed. The MassHealth representative stated that based on the five medications listed, the time approved seemed reasonable. The MassHealth representative stated that if there were, in fact, more medications, the appellant should go back to the PCM agency and have them request further time for the pre-fill and possibly for medication administration.

Findings of Fact

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

1. The PCM agency submitted a reevaluation PA request for PCA services for a total of 28 hours, 15 minutes of day and evening services per week and two hours per night. (Ex. 1; Ex. 5, pp. 4-6).
2. In its submission, the PCM agency indicated that the appellant is an individual who is over the age of 65. (Ex. 5, p. 8).
3. The appellant's primary diagnosis is progressive multiple sclerosis manifesting itself in "extreme wkness,<balance,stiffness, <ROM inhibit ability to do ADLs/IADLs." (Ex. 5, p. 9).
4. In a notice dated May 23, 2023, MassHealth modified the PA request, and approved 27 hours, 15 minutes per week of day and evening services and two hours per night from

June 24, 2023, through June 23, 2024. (Ex. 1; Ex. 5, pp. 4-6).

5. MassHealth specifically modified the times requested for two ADLs (shaving and medication prefill), and two IADLs (laundry and PCA billing).
6. During the hearing and as a result of testimony from the appellant and her son, the MassHealth representative overturned the modifications to laundry and PCA billing. (Testimony of the MassHealth representative; Testimony of the appellant; Testimony of the appellant's son).
7. MassHealth therefore will approve 60 minutes per week for laundry and 10 minutes per week for PCA billing. (Testimony of the MassHealth representative; See Ex. 5, pp. 30, 31).
8. Shaving:
 - a. The PCM agency requested five minutes per day for shaving. (Ex. 5, p. 17).
 - b. MassHealth modified this to five minutes, two times per week. (Ex. 1, p. 3; Ex. 5, p. 6).
 - c. Citing 130 CMR 422.410(A)(3) and 450.204(A)(1), MassHealth stated that the reason for the modification was “. . . BECAUSE THE TIME YOU REQUESTED FOR ASSISTANCE WITH BATHING OR GROOMING IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS.” (Ex. 1, p. 3; Ex. 5, p. 6).
 - d. The appellant does not shave every day but does shave at least four times per week. (Testimony of the appellant's son).
 - e. If the appellant shaves with less frequency, there is a greater chance of causing nicks and bleeding. (Testimony of the appellant's son).
9. Medication pre-fill:
 - a. The PCM agency requested 10 minutes per week for assistance with pre-filling the appellant's medication box. (Ex. 5, p. 23).
 - b. The PCM agency's brief explanation for the need for this assistance was to “maintain accuracy”. (Ex. 5, p. 23).
 - c. MassHealth modified this to five minutes per week, stating that “THE TIME YOU REQUESTED FOR ASSISTANCE WITH MEDICATIONS OR ANOTHER HEALTH-RELATED NEED IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS” and citing to 130 CMR 422.410(A)(2) and 450.204(A)(1). (Ex. 1, p. 3; Ex. 5, p. 6).

- d. The PCM agency indicated that the appellant is taking five medications on a daily basis. (Ex. 5, p. 9; Testimony of the MassHealth representative).

Analysis and Conclusions of Law

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (Id.). MassHealth covers activity time performed by a PCA in aiding with ADLs and IADLs. (130 CMR 422.411(A)). ADLs include certain specified activities that are fundamental to an individual's self-care and include grooming and assistance with medications or other health-related needs. (130 CMR 422.402; 422.410(A)(2), (3)).

MassHealth does 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. (130 CMR 450.204). 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 . . . (130 CMR 450.204(A)).

The appellant has shown by a preponderance of the evidence that frequency MassHealth approved for shaving was not sufficient. There was no question that the appellant was not capable of physically performing this activity without at least a substantial amount of assistance. The appellant and her son both agreed with MassHealth that the appellant did not need to shave on a daily basis. They both stated, however, that the appellant does need to shave more than twice per week. The appellant's son stated that the reason for this was to prevent nicks and bleeding. The appellant and her son stated that the appellant needs to shave at least four times per week. Although the MassHealth representative offered to increase the frequency to three times per week, the appellant and her son stated that the appellant needs to shave at least four times per week. Considering the evidence, this does not seem unreasonable.

On the other hand, the appellant has not shown by a preponderance of the evidence that MassHealth incorrectly modified that time for medication pre-fill. Again, there was no question concerning the appellant's need for assistance with this activity. The PCM agency, however,

indicated the appellant was only taking five medications. The MassHealth representative stated that, based on this information, MassHealth determined that 10 minutes was too much time to pre-fill just five medications into a planner. MassHealth acknowledged that the appellant did require some assistance and approved five minutes. Although the appellant and her son stated that the appellant takes more than five medications, they did not present evidence of what these medications were, their dosages, or their frequency of administration. A preponderance of the evidence supports MassHealth's position and does not support an increase in time for pre-filling the appellant's medications. That said, if the appellant is taking more than five medications, she should relay this information to the PCM agency, which can request that MassHealth increase the time for medication pre-fill (and possibly medication administration).

Therefore, the appeal is APPROVED IN PART with regards to shaving and DENIED IN PART with regards to medication pre-fill.

MassHealth may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (Id.). After considering the appellant and her representative's testimony, the MassHealth representative overturned the modifications to laundry and PCA billing and approved the times as requested. As these adjustments were in the appellant's favor, with regards to laundry and PCA billing, the appeal is DISMISSED.

Order for MassHealth

MassHealth must issue a new notice (without appeal rights) approving five minutes, four (4) times per week for shaving. Unless it already has done so, MassHealth should also state in the notice that it is approving the time for laundry and PCA billing in the duration and frequency the PCM agency initially requested. All changes are effective from June 24, 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 report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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