

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Denied-in-part; Dismissed in part	Appeal Number:	2305138
Decision Date:	09/12/2023	Hearing Date:	07/25/2023
Hearing Officer:	Casey Groff, Esq.		

Appearances for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, R.N., Optum, Clinical Reviewer



*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 Services
Decision Date:	09/12/2023	Hearing Date:	07/25/2023
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Reps.:	Brother; PCA
Hearing Location:	Board of Hearings (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 June 13, 2023, MassHealth informed Appellant that it modified his prior authorization (PA) request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. On June 23, 2023, Appellant filed a timely request to appeal the notice. See 130 CMR 610.015(B); Exhibit 2. Modification of a PA request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his brother and his personal care attendant (PCA). All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a disabled adult MassHealth member under the age of 65. On May 25, 2023, a registered nurse and occupational therapist (OT) from Appellant's personal care management (PCM) agency conducted an initial evaluation of Appellant to determine his need for personal care attendant (PCA) services. The nursing and OT assessments reported that Appellant has a primary diagnosis of paranoid schizophrenia manifested by conditions of decreased strength, cognitive impairment, impaired memory, behavioral issues, hallucinations, and wandering. See Exh. 4., pp. 8-12, 50-52, 62. Appellant has additional diagnoses of anxiety, major depression, and severe obesity. See id. Appellant lives in an apartment complex with his family. Id. He is non-verbal and is unable to speak in complete sentences. Id. He has auditory and visual hallucinations, fixates on sounds and lighting, has decreased attention span, mood swings, and is resistant to personal care. Id. He can become disoriented to place and will urinate on the floor at inappropriate places. Id. Due to his wandering behavior, he has been found and brought home by police on multiple occasions over the past year. Id. The assessment also reported that Appellant is at risk from falls and that he sustained a broken arm after falling from a porch. Id. The PCM agency found that due to his functional impairments, Appellant is totally dependent for specific activities of daily living (ADLs) including bathing, grooming, health care needs, as well as all instrumental activities of daily living (IADLs). Id. at 8-9. He requires maximum assistance with toileting, dressing, medications, and minimum to moderate assistance with transfers in/out of the shower and on/off toilet. Id. The PCM agency also noted Appellant requires 24-hour supervision due to his risk for falls and wandering behaviors, which his family provides. Id. at 50-52.

Pursuant to its assessment, the PCM agency sent MassHealth an initial prior authorization (PA) request for PCA services on May 31, 2023. See Exh. 4. The request sought approval for 27 hours and 30 minutes per-week of day/evening PCA services and 2 hours per-night for nighttime PCA services for dates of service beginning June 13, 2023 and ending June 12, 2024. See Exh. 1, p. 3 and Exh. 4.

On June 13, 2023, MassHealth modified Appellant's PA request by approving 18 hours and 30 minutes per-week of day/evening services. See Exh. 1. MassHealth approved the nighttime hours as requested. Id. The modification was based upon MassHealth's decision to reduce time for PCA assistance with the following ADL tasks: (1) bathing, (2) grooming/oral care, (3) grooming/lotion application, (4) undressing, (5) bladder care, (6) medication prefill, and (7) medication administration. Id. At hearing, the parties addressed each modification as follows:

Bathing/Showering

The MassHealth representative explained that under the ADL category of “bathing,” Appellant’s PCM agency requested 40 minutes per-day (40x1x7) for showering, consisting of time for the PCA to assist Appellant with transfers in and out of the shower. See Exh. 4. at 18. In support of the requested time, the PCM agency noted that Appellant did not have a shower chair or grab bars; that Appellant requires moderate assistance with transfers for safety; he has mood swings, decreased attention span, and is resistant to personal care at all times; he has visual and auditory hallucinations, is easily distracted, and can be aggressive; he is fixated on the sound of water and does not make any attempt to bathe himself; he is 5’9” and weighs 250lbs; he is dependent for bathing all body parts and shampoo of hair. Id. at 19.

MassHealth modified the request by approving 30 minutes daily (30x1x7) for showering. See Exh. 1. The MassHealth representative explained that 40 minutes exceeded normal limits to shower someone with Appellant’s functional ability. According to the PCA evaluation, Appellant is independent for mobility and transfers (aside from bath and toileting) and no time had been requested under these ADL categories. Accordingly, MassHealth approved the time that is customary for an individual who requires assistance with washing, drying, and getting in/out of the shower, but who otherwise does not have impaired mobility or a need to use a special transfer device. The RN representative also noted that under a separate request, MassHealth approved 8 minutes for a “PM wash” due to bladder incontinence, impaired cognition, and being at risk for skin breakdown. See Exh. 4. at 28.

Appellant’s brother testified that 30 minutes was insufficient for the PCA to assist Appellant with his daily shower. Specifically, he explained, Appellant will become fixated on sounds, including the sound of running water which is always present during bathing. Once fixated, he becomes completely immobile and will not contribute in any way to the bathing process. The PCA therefore must complete all tasks, including undressing, transferring him into the shower, washing his body, physically putting shampoo and conditioner in his hair and rinsing, transferring him out of the shower, and drying. Due to his resistance to care and aggressive behaviors, each step in the showering process takes longer and requires the need for greater assistance. Additionally, Appellant’s incontinence, i.e., voiding during non-toileting times, has been getting much worse. For example, he recently had four accidents in a single day, requiring multiple cleanups. The brother acknowledged that although a PM wash was approved, the PCA still needs additional time to ensure Appellant is thoroughly cleaned during his daily shower to address his incontinence and hygiene issues.

Grooming/Lotion Application

Next, the MassHealth representative testified that under the ADL category of “grooming” Appellant’s PCM agency requested 5 minutes per-day for assistance with lotion application. See id. at 20. In support of the request, the PCM agency noted that Appellant has impaired

cognition and is unable to follow commands consistently; he has mood swings, hallucinations, decreased attention span, and aggressive behavior. He is dependent for all grooming tasks, including lotion application, which is applied daily due to Appellant having dry skin. Id. at 20-21

MassHealth modified the request by approving 3 minutes per-day (3x1x7) for lotion application. See id. at 6. The MassHealth representative testified that dry skin not a medical issue and three minutes should allow for the PCA to apply lotion after a main bathing activity.

In response, Appellant's brother and PCA testified that this process takes longer than 3 minutes due to Appellant's resistive behaviors. For example, Appellant will start to wander off half way through the process, requiring the PCA to stop and re-approach, sometimes several times to ensure lotion is thoroughly applied.

Bladder Care

Next, the MassHealth representative explained that under the ADL category for "toileting," Appellant's PCM agency requested 12 minutes, 10 times daily (12x10x7) for assistance with bladder care, specifically providing physical assistance with toilet hygiene, clothing management, and regular transfer to and from the bathroom. See id. at 24-25. In support of its request, the PCM agency noted that Appellant is incontinent of bladder; he is distracted and urinates on floor or at inappropriate places; he hallucinates, forgets where he is, talks to self, and will otherwise refuse to go to the toilet; he is dependent for clothing management, incontinence care, and bowel hygiene due to impaired cognition. Id.

For bladder care, MassHealth modified the time-per-episode to 8 minutes (instead of 12), as well as the number of daily episodes to 8 (instead of 10), i.e., 8x8x7. See Exh. 1. With respect to the reduction in episodes per-day, MassHealth explained that Appellant was also approved for one episode of bowel care per-day, giving Appellant 9 toileting episodes total. With 18 day/evening hours per-day, this gives the PCA the opportunity to toilet Appellant once every two hours, which is the industry standard for a toileting program. Anything beyond that would be excessive. MassHealth also noted that it approved the maximum number of nighttime hours, which allows for the PCA to toilet Appellant during the night. To the extent Appellant requires additional episodes due to accidents, the MassHealth representative explained such care would be anticipatory and not a covered PCA service. Rather, MassHealth will approve time to place someone on a managed toileting schedule to help avoid occurrence of accidents. In addition, MassHealth reduced the requested time of 12 minutes as exceeding the amount of time it would ordinarily take to assist someone with bladder care needs.

In response, Appellant's brother and PCA did not dispute MassHealth's reduction of the time per-episode and agreed that 8 minutes was sufficient as approved. However, Appellant's representatives disagreed with the reduction in episodes from 12 to 8, asserting that Appellant will pass urine more than 10 times per-day, sometimes occurring multiple times per-hour.

Appellant's physician told Appellant that he was dehydrated and has advised him to drink more water, i.e., as much water as possible. This has caused an increased need to empty his bladder. Additionally, Appellant is experiencing more frequent accidents, which occur in addition to scheduled toilet times, and require cleaning.

The MassHealth representative responded that it stood by its decision to modify bladder care, stating that voiding several times per-hour is a medical issue. There was no documentation to indicate Appellant has a medical diagnosis that would cause him to pass urine so frequently, and that if there were a diagnosis, Appellant would need an absorbent as routine toileting schedule would not be helpful to prevent accidents.

Resolved ADLs

Upon discussion at hearing, the parties resolved the remaining modifications based on the following agreements.

Oral Care

For oral care, Appellant requested 5 minutes twice daily (5x2x7). See Exh. 4, p. 18. MassHealth modified the request by reducing the time-per-episode to 3 minutes per-episode (3x2x7). Id. Upon discussion at hearing, Appellant accepted this modification.

Undressing

For the ADL of undressing, Appellant requested 15 minutes once daily (15x1x7). Id. MassHealth modified the request by approving 10 minutes daily (10x1x7). Upon discussion at hearing, Appellant accepted this modification.

Medication Assistance (Prefill & Administration)

For the ADL category of medication assistance, Appellant requested 10 minutes per-week (10x1x1) for medication prefill and 2 minutes twice per-day (2x2x7) for assistance with medication administration. See id. at 26. MassHealth did not approve any time for the prefill because documentation indicated Appellant received a visiting nurse that performed this task. Additionally, MassHealth reduced the frequency of administering medications to once per-day based on the inference that a visiting nurse would administer one of the two daily doses during scheduled visits. In response, Appellant's brother clarified that a nurse comes once per-week and only to pre-fill medications; however, the nurse does not administer medications, and this is performed solely by the PCA. Appellant accepted the modification to prefill (0x0) and MassHealth agreed to restore the frequency requested for medication administration at 2x2x7.

Findings of Fact

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

1. Appellant is a disabled adult MassHealth member under the age of 65.
2. Appellant has a primary diagnosis of paranoid schizophrenia manifested by conditions of decreased strength, cognitive impairment, impaired memory, behavioral issues, hallucinations, and wandering, as well as additional diagnoses of anxiety, major depression, and severe obesity.
3. Appellant is 5'9", weighs 250lbs, and lives in an apartment complex with his family.
4. PCM nursing and OT assessments performed on May 25, 2023 reported that Appellant is non-verbal, has auditory and visual hallucinations, decreased attention span, mood swings, and is resistant to personal care; he can become disoriented to place and will urinate on the floor at inappropriate places; he fixates on sounds and lighting; he wanders and has on multiple occasions been found and brought home by police.
5. On May 31, 2023, pursuant to its assessment, the PCM agency sent MassHealth an initial request seeking prior authorization for 27 hours and 30 minutes per-week of day/evening PCA services and 2 hours per-night for nighttime PCA services for dates of service beginning June 13, 2023 and ending June 12, 2024.
6. Through a letter dated June 13, 2023, MassHealth notified Appellant that it modified his PA request by approving 18 hours and 30 minutes per-week of day/evening services, based on reduction in times approved for the following ADL tasks: (1) bathing, (2) grooming/oral care, (3) grooming/ lotion application, (4) undressing, (5) bladder care, (6) medication prefill, and (7) medication administration.

Bathing

7. Under the ADL of "bathing," Appellant's PCM agency requested 40 minutes per-day (40x1x7) for showering.
8. MassHealth modified the time for shower to 30 minutes per-day (30x1x7).
9. In a separate category, MassHealth also approved 8 minutes for a night wash due to his bladder incontinence.
10. Appellant requires moderate assistance with transfers in/out of the shower for safety; he has reported mood swings, decreased attention span, and resistance to personal care; he has visual and auditory hallucinations; he is easily distracted and can be aggressive; he is fixated on sound of water; he does not make any attempt to bathe

himself and is entirely dependent on the PCA for bathing all body parts and washing his hair.

11. Due to increasing episodes of urinary incontinence, additional time is required for the PCA to ensure Appellant is thoroughly washed during his daily shower.

Grooming/Lotion Application

12. Under the ADL category of “grooming” Appellant’s PCM agency requested 5 minutes per-day (5x1x7) for assistance with lotion application.
13. MassHealth modified the request by approving 3 minutes per-day (3x1x7) for lotion application.
14. Appellant is dependent for all grooming tasks, including lotion application, which is applied daily due to Appellant having areas of dry skin.
15. Due to Appellant’s resistive and wandering behaviors, the PCA has to re-approach Appellant multiple times to complete this task.

Toileting/Bladder Care

16. Under the ADL category for “toileting,” Appellant’s PCM agency requested 12 minutes, 10 times daily (12x10x7) for bladder care, specifically providing physical assistance with toilet hygiene, clothing management, and regular transfer to and from the bathroom.
17. MassHealth modified the time-per-episode to 8 minutes (instead of 12), as well as the number of daily episodes to 8 (instead of 10), i.e., 8x8x7.
18. In addition to toileting for bladder, MassHealth approved one episode of toileting for bowel care, which is expected to include any bladder care needs, and thus resulting in a total of 9 toileting episodes per day.
19. Appellant is incontinent of bladder; he is distracted and urinates on floor or at inappropriate places; he hallucinates, forgets where he and will refuse to go to the toilet; he is dependent for clothing management and incontinence care due to impaired cognition.
20. Appellant did not dispute MassHealth’s modification to the time-per-episode to 8 minutes for each bladder care episode.
21. After discussion at hearing, Appellant accepted MassHealth’s modification to oral care (under “grooming”) at 3x2x7, undressing at 10x1x7, and medication prefill at 0x0.
22. At hearing, MassHealth agreed to approve the time requested for medication

administration at 2x2x7.

Analysis and Conclusions of Law

MassHealth covers personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:¹ First, the services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” See 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair the member’s functional ability to perform [at least two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the prerequisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive PCA assistance to meet his care needs. The MassHealth PCA program covers medically necessary assistance with the following ADLs:

(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

¹ PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.002.

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 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.

See 130 CMR 422.410 (emphasis added).

MassHealth covers the amount of PCA services a member requires based on the “activity time performed by a PCA in providing assistance with the [task].” See 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with his or her ADL/IADL. See 130 CMR 422.402. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Bathing

Appellant requested 40 minutes for PCA assistance with a daily shower. MassHealth modified the request and approved 30 minutes for this task. Based on the evidence presented, Appellant demonstrated that 30 minutes daily is insufficient for the PCA meet Appellant’s bathing care needs. The evidence shows that due to his cognitive impairments, Appellant cannot actively participate in any aspect of bathing. He therefore requires PCA assistance at each stage of the bathing process, including transfers in/out of the bath, washing his body and hair, and drying. Moreover, Appellant is nonverbal, has impaired ability to initiate tasks, resists care, and will become fixated on water sounds, rendering him completely immobile. As a result of these behaviors, each facet of the bathing process takes longer, and requires more active involvement by the PCA. The evidence also indicates that due to repeated episodes of incontinence, Appellant requires more thorough cleaning to address his unique hygiene concerns. These factors, considered together, support Appellant’s need for the full amount of

PCA assistance requested for showering at 40x1x7. Accordingly, the appeal is APPROVED-in-part with respect to showering.

Grooming/Lotion Application

For the same reasons discussed above, Appellant demonstrated that MassHealth's modification to lotion application (modified from 5 minutes to 3 minutes daily) is insufficient to meet his care needs. The clinical evaluations, oral testimony, and written submissions show that Appellant requires daily lotion application to prevent worsening dry skin. Appellant's cognitive impairments prevent him from participating in this necessary grooming activity. Moreover, the PCA's ability to complete this task is complicated by Appellant's behavioral challenges, including resistance to care, wandering, and aggressive behavior. Appellant's brother testified credibly that because of Appellant's tendency to wander-off in the midst of receiving care, the PCA must repeatedly approach Appellant to ensure all dry skin areas are thoroughly addressed. For these reasons, the appeal is APPROVED with respect to Appellant's request for lotion application at 5x1x7.

Toileting/Bladder Care

In reviewing the evidence, Appellant did not meet his burden in demonstrating that MassHealth incorrectly modified the daily "bladder care" episodes from the requested 12 episodes per-day to eight episodes per day. Appellant's brother testified that Appellant receives bladder care more than 8 times per-day, and sometimes up to four times an hour when he is having accidents or urinating at unexpected/inappropriate times. MassHealth, persuasively testified, however, that the industry standard for someone on a toileting program is once every two hours. For 18 day/evening hours, this amounts to 9 toileting episodes per-day. When factoring in the additional toileting episode approved for bowel care, Appellant has, in fact, nine toileting episodes per-day. MassHealth persuasively explained that a need for toileting beyond the approved frequency, such as multiple times per-hour as Appellant testified, is indicative of a medical condition. Aside from Appellant's brother's testimony that Appellant consumes extra water to treat dehydration, there was no documentation showing that Appellant had any specific diagnosis that would cause him to pass urine excessively. Absent such evidence, MassHealth appropriately modified the frequency of episodes for assistance with bladder care.

The appeal is DENIED-in-part as it pertains to MassHealth's modification to 8 episodes of bladder care per-day; and is DISMISSED-in-part as Appellant accepted MassHealth's modification to 8 minutes for each bladder care episode.

The appeal is further DISMISSED-in-part with respect to the remaining modifications, which were resolved at hearing, as follows:

- Grooming/Oral Care: Appellant accepted modification of 3x2x7.

- Undressing: Appellant accepted modification of 10x1.
- Medication (prefill/administration):
 - *Prefill*: Appellant accepted modification of 0x0, and
 - *Administration*: MassHealth agreed to approve 2x2x7, as requested.

Order for MassHealth

For the PA period covering dates of service beginning 6/13/2023 and ending 6/12/2024, adjust the modified ADLs as follows:

- In accordance with this decision, approve the time requested for PCA assistance with showering (40x1x7) and grooming/lotion application (5x1x7).
- In accordance with MassHealth's agreement at hearing, approve the time requested for medication administration at 2x2x7.

All other ADL categories to remain as approved in MassHealth's 6/13/23 notice.

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.

Casey Groff, Esq.

Hearing Officer
Board of Hearings

cc:

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

