

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2306019
Decision Date:	10/16/2023	Hearing Date:	08/25/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:




Appearance for MassHealth:

Donna Burns, 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 Agency (PCA) Prior Authorization (PA)
Decision Date:	10/16/2023	Hearing Date:	08/25/2023
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 July 6, 2023, MassHealth approved the appellant's PA request for PCA services but with modifications to the time requested for seven Activities of Daily Living ("ADLs") and one Instrumental Activity of Daily Living ("IADL"). (See 130 CMR 422.410(A)(1),(2),(3),(7); 422.410(B)(3) and 130 CMR 450.204(A)(1); Exhibit (Ex.) 1; and Ex. 6, pp. 4-7). The appellant filed this appeal in a timely manner on July 21, 2023. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. (See 130 CMR 610.032(A)(3)).

Action Taken by MassHealth

MassHealth approved the appellant's PA request for PCA services but with modifications to the time requested for seven ADLs and one IADL.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(1),(2),(3),(7);

422.410(B)(3) and 130 CMR 450.204(A)(1) in modifying the requested times for these ADLs and IADLs.

Summary of Evidence

The appellant is an individual over the age of 65 who, with his wife, resides in his son's home with the son's wife and children. (Ex. 3; Ex. 6, pp. 3, 11, 12). According to the PA request:

[The appellant] suffers from chronic pain in his back, and legs. He has spinal stenosis resulting in back and neck pain making bending, reaching and mobility difficult. He has [p]ain in his right shoulder. . . He had open heart surgery in 2018, since this surgery he has had ongoing weakness, shortness of breath with minimal exertion. He reports frequent dizziness when standing, he is only able to stand for short periods of time due to his weakness and shortness of breath. He has a new onset of his feet and legs being cold and swelling in his feet. [The appellant] currently has no services in place. (Ex. 6, p. 12).

The PCM agency submitted an initial PA request for 34 hours, 30 minutes of day and evening PCA services *per* week and two hours *per* night for one year. (Ex. 6, p. 37). On July 6, 2023, MassHealth notified the appellant that it had approved a total of 29 hours of day and evening services *per* week and two hours *per* night for dates of service from July 6, 2023 through July 5, 2024. (Ex. 1; Ex. 6 pp. 3, 6). In order to reach its new total, MassHealth modified the times requested for mobility, repositioning, oral care, shaving, bladder care, bowel care, medication assistance, and medical transportation. (Ex. 1; Ex. 6, pp. 3, 6). During the hearing, the MassHealth representative overturned the modifications to repositioning, oral care, shaving, bladder care, bowel care, and medication assistance after hearing the appellant's son testimony concerning these six ADLs. This left the modifications to mobility, an ADL, and medical transportation, an IADL, in dispute at the end of the hearing.

1. Mobility

The PCM agency requested four minutes, eight times *per* day, seven days *per* week for mobility. (Ex. 6, p. 16). The PCM agency stated that “[c]onsumer has a cane that he uses inside the home and has crutches he uses outside of the home. Consumer requires assist with...mobility...due to pain and shortness of breath...” (Ex. 6, p. 17). The MassHealth representative stated that the occupational therapist (OT) report submitted with the PA request indicated that the appellant required “minimal assistance” with mobility, however. (Ex. 6, p. 8). MassHealth therefore modified mobility to three minutes, eight times *per* day seven days *per* week with the explanation that “THE TIME YOU REQUESTED FOR ASSISTANCE WITH MOBILITY IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS” citing 130 CMR 422.410(A)(1) and 450.204(A)(1) . (Ex. 1; Ex. 6, pp. 3, 5).

The MassHealth representative asked the appellant's son for the reason he felt the appellant

required more time for mobility than MassHealth approved as modified. The appellant's son stated that both of his parents are old. The appellant's son stated that the appellant requires assistance standing up and that the appellant's son and his wife help the appellant to stand and to sit. The appellant's son stated that the appellant cannot move without their assistance. The appellant's son assists the appellant with maneuvering himself around their house. The appellant's son and his wife hold the appellant under his arms in order to assist him in standing up. The appellant does sometimes use a crutch or stick to help while moving. When the appellant's son assists the appellant in moving or going up stairs, he will rest his hands on the appellant's belt, one on the front and one on the back. The appellant does not have a wheelchair. The appellant's son stated that when the appellant needs to move about the home, he requires four to five minutes of assistance. The appellant's son stated that this takes much longer in the morning but averages to four or five minutes during the day.

The appellant's son stated that, although the appellant has a walker, he does not use it in the home. The appellant's son stated that he is less able to support the appellant when he is using the walker and that the appellant has fallen and hurt himself in the past while using the walker without assistance. The appellant's son stated that their home was about 1400 square feet and had two floors. The appellant lived on the second floor. The appellant's son stated that the appellant does not spend all of his time on one floor. During the daytime, he moves downstairs but generally does remain in one place. When the appellant does move around the house, it does take four to five minutes to move between destinations. The appellant's son acknowledged that this was unusually slow but one of the appellant's legs is always swollen and did not move well. The appellant's son stated that the appellant moves around the house three to five times per day.

The MassHealth representative stated that she would be willing to revise the amount of time and frequency for mobility to four minutes, four times per day. The appellant's son was unsure as to whether this would be sufficient.

2. Medical Transportation

The PCM agency requested 46 minutes *per* week for medical transportation. (Ex. 6, p. 35). This involved 12 visits to the appellant's primary care physician, 12 visits to his cardiologist, four to his dentist, two to his eye doctor, and four for his dermatologist. (Ex. 6, p. 42). The PCM agency determined that each appointment would involve 20 minutes of travel. (Ex. 6, p. 42). PCM agency stated "[c]onsumer is dependent for all transportation to appointments, he does not drive and does not use PT1." (Ex. 6, p. 35). MassHealth modified the time for medical transportation to 22 minutes *per* week. (Ex. 1; Ex. 6, pp. 3, 5). MassHealth stated that "THE TIME YOU REQUESTED FOR ASSISTANCE WITH TRANSPORTATION IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS" citing 130 CMR 422.410(B)(3) and 130 CMR 450.204(A)(1). (Ex. 1; Ex. 6, pp. 3,5). Specifically, MassHealth reduced the number of PCP and cardiologist appointments to six apiece and reduced the travel time to 15 minutes *per* appointment, total. (Ex. 1; Ex. 6, pp. 3, 5).

The MassHealth representative stated that there did not seem to be a medical necessity for the appellant to travel to the same number of cardiology and PCP appointments. The appellant's son stated that the appellant goes to the PCP only eight or nine times *per* year. The appellant's son stated that the appellant has gone to his cardiologist six to seven times *per* year in the past. The appellant, however, had a heart attack the previous month and has seen the cardiologist twice since that time. The MassHealth representative stated that she would be willing to offer eight visits per year for both PCP and cardiology. The appellant's son was unsure as to whether this would be enough.

Findings of Fact

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

1. The appellant is an individual over the age of 65. (Ex. 3; Ex. 6, pp. 3, 11),
2. The appellant and his wife live in the appellant's son's home with the son's wife and children. (Testimony of the appellant's son).
3. According to the PA request:

[The appellant] suffers from chronic pain in his back, and legs. He has spinal stenosis resulting in back and neck pain making bending, reaching and mobility difficult. He has [p]ain in his right shoulder...He had open heart surgery in 2018, since this surgery he has had ongoing weakness, shortness of breath with minimal exertion. He reports frequent dizziness when standing, he is only able to stand for short periods of time due to his weakness and shortness of breath. He has a new onset of his feet and legs being cold and swelling in his feet. [The appellant] currently has no services in place. (Ex. 6, p. 12).
4. The PCM agency submitted an initial PA request for 34 hours, 30 minutes of day and evening PCA services *per* week and two hours *per* night for one year. (Ex. 6, p. 37).
5. On July 6, 2023, MassHealth notified the appellant that it had approved a total of 29 hours of day and evening services *per* week and two hours *per* night for dates of service from July 6, 2023 through July 5, 2024. (Ex. 1; Ex. 6 pp. 3, 6).
6. In order to reach its new total, MassHealth modified the times requested for mobility, repositioning, oral care, shaving, bladder care, bowel care, medication assistance, and medical transportation. (Ex. 1; Ex. 6, pp. 3, 6).
7. During the hearing, the MassHealth representative overturned the modifications and approved the times for repositioning, oral care, shaving, bladder care, bowel care, and medication assistance as requested. (Testimony of the MassHealth representative).

8. The PCM agency requested four minutes, eight times *per* day, seven days *per* week for mobility. (Ex. 6, p. 16).
 - a. The PCM agency stated that “[c]onsumer has a cane that he uses inside the home and has crutches he uses outside of the home. Consumer requires assist with . . . mobility . . . due to pain and shortness of breath...” (Ex. 6, p. 17).
 - b. An OT report submitted with the PA request indicated that the appellant required “minimal assistance” with mobility. (Ex. 6, p. 8).
 - c. MassHealth modified mobility to three minutes, eight times *per* day seven days *per* week with the explanation that “THE TIME YOU REQUESTED FOR ASSISTANCE WITH MOBILITY IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS” citing 130 CMR 422.410(A)(1) and 450.204(A)(1). (Ex. 1; Ex. 6, pp. 3, 5).
 - d. The appellant’s bedroom is on the second floor of the appellant’s 1400 square foot home. (Testimony of the appellant’s son).
 - e. When the appellant does move around the house, it does take four to five minutes to move between destinations because of leg swelling. (Testimony of the appellant’s son).
 - f. The appellant moves around the house three to five times *per* day. (Testimony of the appellant’s son).
 - g. The MassHealth representative offered to increase the time to four minutes *per* occurrence but with a decrease in frequency to four times *per* day. (Testimony of the MassHealth representative).
9. The PCM agency requested 46 minutes *per* week for medical transportation. (Ex. 6, p. 35).
 - a. This involved 12 visits to the appellant’s primary care physician, 12 visits to his cardiologist, four to his dentist, two to his eye doctor, and four for his dermatologist. (Ex. 6, p. 42).
 - b. The PCM agency determined that each appointment would involve 20 minutes of travel. (Ex. 6, p. 42).
 - c. PCM agency stated “[c]onsumer is dependent for all transportation to appointments, he does not drive and does not use PT1.” (Ex. 6, p. 35).
 - d. MassHealth modified the time for medical transportation to 22 minutes *per* week because “THE TIME YOU REQUESTED FOR ASSISTANCE WITH TRANSPORTATION IS LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS.”

(Ex. 1; Ex. 6, pp. 3,5).

- e. Specifically, MassHealth reduced the number of PCP and cardiologist appointments to six apiece and reduced the travel time to 15 minutes *per* appointment, total. (Ex. 1; Ex. 6, pp. 3, 5).
- f. The appellant goes to the PCP eight or nine times *per* year and to the cardiologist six or seven times *per* year. (Testimony of the appellant's son).
- g. The appellant recently had a heart attack and has been to the cardiologist twice in the past month. (Testimony of the appellant's son).
- h. The MassHealth representative offered to increase the number of cardiologist and PCP appointments from six to eight times per year. (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)).

Concerning mobility, the appellant's son has shown by a preponderance of the evidence that the appellant requires four minutes *per* occurrence. The appellant's son's testimony, as well as the information the PCM agency submitted as part of the PA both describe the appellant's difficulties with movement. Based on his knowledge of the appellant's needs, the appellant's son stated that

the appellant needed at least four minutes of assistance to move within the home. Based on this testimony, the MassHealth representative offered to increase the time for mobility to four minutes *per* occurrence, albeit with a decrease in frequency to four times *per* day. Although the appellant's son indicated at the hearing that the frequency of movement is perhaps three or four times *per* day, it is felt that maybe the appellant's son was making an optimistic appraisal. The record shows that the PCM agency and MassHealth in its notice both agreed that there was sufficient evidence to support the medical need for eight times *per* day of mobility assistance. The appellant should receive both the time and frequency for mobility the PCM agency initially requested.

With regards to mobility the appeal is APPROVED.

Concerning medical transportation, a preponderance of the evidence supports partially restoring the time. MassHealth determined that the amount of time the PCM agency requested for this IADL was not supported by medical necessity considering the evidence. Specifically, MassHealth concluded that 12 trips *per* year to both the appellant's cardiologist and PCP was excessive. In his testimony, the appellant's son agreed that the appellant did not go to both his cardiologist and PCP 12 times apiece in one year. The appellant's son did state, however, that the appellant goes to his PCP eight or nine times *per* year and his cardiologist six or seven times *per* year. The appellant's son also stated that the appellant had a recent heart attack and had been to his cardiologist twice in the past month. Based on this evidence, the MassHealth representative offered to increase PCP and cardiologist visits to eight times *per* year apiece. In the light of the written evidence, the appellant's son's testimony, and The MassHealth representative's assessment of both the written evidence and the testimony, the eight times *per* year for both cardiologist and PCP is reasonable. The appellant's son did not contest the modification that MassHealth made to the travel time to appointments, and it must be presumed that 15 minutes per trip is the correct determination.

With regard to medical transportation, the appeal is APPROVED IN PART and DENIED IN PART.

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's son's testimony, the MassHealth representative overturned the modifications to repositioning, oral care, shaving, bladder care, bowel care, and medication assistance and approved the times as requested. Because these adjustments were all in the appellant's favor, with regard to these activities the appeal is DISMISSED.

Order for MassHealth

MassHealth must issue a new determination (without appeal rights) showing the changes described in this decision. Specifically, with regards to repositioning, oral care, shaving, bladder

care, bowel care, and medication assistance, MassHealth must approve the times and frequencies the PCM agency requested. MassHealth must also approve mobility at four minutes, eight times *per day*, seven days *per week*. MassHealth must recalculate the time for medical transportation on the basis of eight trips to the PCP *per year* and eight trips to the cardiologist *per year*. All the changes described above should be effective from July 6, 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