

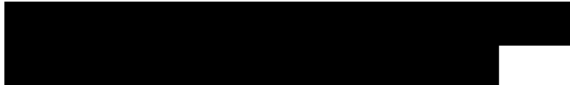
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied in part; Dismissed in part	Appeal Number:	2306021
Decision Date:	10/17/2023	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:	Denied in part; Dismissed in part	Issue:	Personal Care Agency (PCA) Prior Authorization (PA)
Decision Date:	10/17/2023	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 five Activities of Daily Living (ADLs) and three Instrumental Activities of Daily Living (IADLs). (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. 4-6). 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 five ADLs and three IADLs.

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 her husband, resides in her son's home with the son's wife and children. (Ex. 3; Ex. 6, pp. 3, 11). This was an initial request for PCA services and was submitted in conjunction with her husband's request for PCA services. (Ex. 6, p. 11). According to the PA request:

Consumer suffers from chronic pain due to arthritis throughout her body which limits her mobility and her ability to be perform ADLs without assistance. She has pain in bilateral knees which makes ambulation very painful and difficult. She has had injections but reports that has not provided her with relief. She is going to be scheduled for a knee replacement following recovery she will be scheduled another knee replacement. Her medication diagnosis [sic] also include diabetes and urinary incontinence. (Ex. 6, p. 11).

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. 1; Ex. 6, pp. 3, 6, 36). On July 6, 2023, MassHealth notified the appellant that it had approved a total of 27 hours and 45 minutes 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, grooming/other, bladder care, glucometer checks, meal preparation, laundry, and equipment maintenance. (Ex. 1; Ex. 6, pp. 3, 6). During the hearing, the MassHealth representative overturned the modifications to repositioning, grooming/other, and laundry after hearing the appellant's son's testimony concerning these three ADLs and one IADL. The MassHealth representative also offered an adjustment to the modification to mobility, to three minutes, six times per day, seven days per week, which the appellant's son accepted. Finally, the appellant's son accepted the modification that MassHealth made to bladder care to eight minutes, eight times per day, seven days per week.

This left the modifications to glucometer checks, an ADL, and meal preparation, and equipment maintenance., IADLs, in dispute at the end of the hearing.

1. Glucometer Checks

The PCM agency requested four minutes, two times per day, seven days per week for glucometer checks. (Ex. 6, p. 26). According to the occupational therapy (OT) report submitted with the request for services the appellant required maximum assistance with this. (Ex. 6, p. 8). The PCM agency stated that the appellant required "assist with checking her blood sugar twice a day due to her impaired mobility." (Ex. 6, p. 26). MassHealth modified the time for glucometer checks to three minutes, two times per day seven days per week with the explanation 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.” citing 130 CMR 422.410(A)(2) and 450.204(A)(1). (Ex. 1; Ex. 6, p. 5).

The MassHealth representative stated that the ADL involved assisting the appellant with checking her blood sugar. She stated that three minutes per occurrence is the standard of care. The appellant’s son stated that he checked the appellant’s blood sugar three to four times per day. The appellant’s son stated also that sometimes it took two or three attempts before he was able to get a sample. The MassHealth representative stated that the PCM agency requested two times per day, which was approved. The MassHealth representative stated that even with two or three attempts, taking blood for the glucometer check could still take place within three minutes.

2. Meal Preparation

The PCM agency requested 52 minutes per day for meal preparation. (Ex. 6, p. 32). The OT report stated that the appellant was dependent on others for meal preparation. (Ex. 6, p. 8). In its submission the PCM agency stated “[c]onsumer resides with her spouse who is also applying with PCA services. Consumer is dependent for all meal prep, [s]he has impaired mobility and spends the day sitting or laying [sic] in bed[.] [W]hen she is up she requires assist with all mobility. She is dependent for meal prep due to pain.” (Ex. 6, p. 32). MassHealth modified this time to 45 minutes per day because “YOU REQUESTED ASSISTANCE WITH OTHER INSTRUMENTAL ACTIVITIES OF DAILY LIVING AND YOU LIVE WITH OTHER PCA CONSUMERS AND YOUR NEED FOR ASSISTANCE WITH INSTRUMENTAL ACTIVITIES OF DAILY LIVING MUST BE CALCULATED ON A SHARED BASIS” citing 130 CMR 422.410(C)(2)). (Ex. 1; Ex. 6, p. 5).

The MassHealth representative stated that the reason for the modification here was that the appellant and her husband, who both live in the same household, were both requesting time for meal preparation. The MassHealth representative stated that the most time that a household will receive for meal preparation is 90 minutes total. MassHealth therefore split 90 minutes in half and gave the appellant and her husband 45 minutes apiece for meal preparation. The appellant’s son stated that the appellant and her husband rarely eat the same food. The appellant’s son stated that his wife (the appellant’s daughter in law) spends a lot of time every day preparing food for the appellant and the appellant’s husband.

3. Equipment Maintenance

The PCM agency requested 10 minutes *per* week for assistance with equipment maintenance because “[c]onsumer has crutches and a shower chair that requires cleaning to remain in good working order...” (Ex. 6, p. 33). MassHealth did not approve any time for equipment maintenance because “THE TIME YOU REQUESTED FOR ASSISTANCE WITH CARE AND MAINTENANCE OF A WHEELCHAIR OR OTHER ADAPTIVE DEVICE LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS” citing 130 CMR 422.410(B)(4)(A) and 130 CMR 450.204(A)(1).

The MassHealth representative stated that MassHealth determined that wiping down the

appellant's shower chair and crutches were quickly and easily performed activities that did not rise to the level of maintenance. The appellant's son stated that he cleaned the appellant's shower chair every three or four days in order to prevent mold build up.

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 who, with her husband, resides in her son's home with the son's wife and children. (Ex. 3; Ex. 6, pp. 3, 11).
2. This was an initial request for PCA services and was submitted in conjunction with her husband's request for PCA services. (Ex. 6, p. 11).

3. According to the PA request:

Consumer suffers from chronic pain due to arthritis throughout her body which limits her mobility and her ability to be perform ADLs without assistance. She has pain in bilateral knees which makes ambulation very painful and difficult. She has had injections but reports that has not provided her with relief. She is going to be scheduled for a knee replacement following recovery she will be scheduled another knee replacement. Her medication diagnosis [sic] also include diabetes and urinary incontinence. (Ex. 6, p. 11).

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. 1; Ex. 6, pp. 3, 6, 36).
5. On July 6, 2023, MassHealth notified the appellant that it had approved a total of 27 hours and 45 minutes 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, grooming/other, bladder care, glucometer checks, meal preparation, laundry, and equipment maintenance. (Ex. 1; Ex. 6, pp. 3, 6).
7. During the hearing, the MassHealth representative overturned the modifications to repositioning, grooming/other, and laundry after hearing the appellant's son's testimony concerning these three ADLs and one IADL. (Testimony of the MassHealth representative; Testimony of the appellant's son).
8. The MassHealth representative also offered an adjustment to the modification to mobility, to three minutes, six times per day, seven days per week, which the appellant's son

accepted. (Testimony of the MassHealth representative; Testimony of the appellant's son).

9. Finally, the appellant's son accepted the modification that MassHealth made to bladder care to eight minutes, eight times per day, seven days per week. (Testimony of the MassHealth representative; Testimony of the appellant's son).

10. Glucometer Checks

- a. The PCM agency requested four minutes, two times per day, seven days per week for glucometer checks. (Ex. 6, p. 26).
- b. According to the OT report submitted with the request for services the appellant required maximum assistance with this. (Ex. 6, p. 8).
- c. The PCM agency stated that the appellant required "assist with checking her blood sugar twice a day due to her impaired mobility." (Ex. 6, p. 26).
- d. MassHealth modified the time for glucometer checks to three minutes, two times per day seven days per week with the explanation 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." citing 130 CMR 422.410(A)(2) and 450.204(A)(1) . (Ex. 1; Ex. 6, p. 5).

11. Meal Preparation

- a. The PCM agency requested 52 minutes per day for meal preparation. (Ex. 6, p. 32).
- b. The OT report stated that the appellant was dependent on others for meal preparation. (Ex. 6, p. 8).
- c. In its submission the PCM agency stated "[c]onsumer resides with her spouse who is also applying with PCA services. Consumer is dependent for all meal prep, [s]he has impaired mobility and spends the day sitting or laying [sic] in bed[.] [W]hen she is up she requires assist with all mobility. She is dependent for meal prep due to pain." (Ex. 6, p. 32).
- d. MassHealth modified this time to 45 minutes per day because "YOU REQUESTED ASSISTANCE WITH OTHER INSTRUMENTAL ACTIVITIES OF DAILY LIVING AND YOU LIVE WITH OTHER PCA CONSUMERS AND YOUR NEED FOR ASSISTANCE WITH INSTRUMENTAL ACTIVITIES OF DAILY LIVING MUST BE CALCULATED ON A SHARED BASIS" citing 130 CMR 422.410(C)(2)). (Ex. 1; Ex. 6, p. 5).

12. Equipment Maintenance

- a. The PCM agency requested 10 minutes per week for assistance with equipment maintenance because “[c]onsumer has crutches and a shower chair that requires cleaning to remain in good working order...” (Ex. 6, p. 33).
- b. MassHealth did not approve any time for equipment maintenance because “THE TIME YOU REQUESTED FOR ASSISTANCE WITH CARE AND MAINTENANCE OF A WHEELCHAIR OR OTHER ADAPTIVE DEVICE LONGER THAN ORDINARILY REQUIRED FOR SOMEONE WITH YOUR PHYSICAL NEEDS” citing 130 CMR 422.410(B)(4)(A) and 130 CMR 450.204(A)(1).

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 assistance with medications or other health-related needs. (130 CMR 422.402; 422.410(A)(2)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, and the care and maintenance of medical equipment. (130 CMR 422.402; 422.410(B)(2), (4)(a)).

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)).

A preponderance of the evidence does not show that the times the PCM agency requested for assistance with glucometer checks, meal preparation, and equipment maintenance were medically necessary at those levels. At the same time, the appellant’s son was not able to provide further justification in his testimony to support the medical necessity of times for these activities beyond what MassHealth determined in its notice. For the above stated reasons, with

regard to glucometer checks, meal preparation, and equipment maintenance, the appeal is DENIED.

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, grooming/other, and laundry and approved the times as requested. Additionally, the appellant's son did not contest the modification to bladder care. Because these adjustments were either in the appellant's favor, or not objectionable to the appellant, with regard to these activities the appeal is DISMISSED.

Order for MassHealth

If MassHealth has not done so already, it must issue a new notice (without appeal rights) approving the following: mobility 3x6x7; repositioning 2x8x7; grooming 10x1x7; bladder 8x8x7; glucometer check 3x2x7; meal preparation 45x1x7; laundry 60x1x1; equipment maintenance 0x0x0. The effective date is 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