

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2307427
Decision Date:	11/16/2023	Hearing Date:	09/29/2023
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, R.N.

Interpreter:



*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:	PA-PCA Services
Decision Date:	11/16/2023	Hearing Date:	09/29/2023
MassHealth's Rep.:	Robin Brown, R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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 August 21, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on August 24, 2023. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant is a MassHealth member in her [REDACTED] who

represented herself at hearing via telephone. The MassHealth representative testified that the documents submitted show that the appellant has a primary diagnosis of osteoarthritis, with other medical issues including diabetes, heart disease, emphysema, hand surgery, pain in her back, knees and hands, limited endurance, a weak grip and falls. (Ex. 4, p. 13; Testimony). Appellant lives with her husband, an adult son, an adult daughter and a grandchild in their mid-teens. There are bathrooms on each level of appellant's home and she walks with a rollator walker. The appellant's personal care management (PCM) agency, [REDACTED], submitted a prior authorization request for PCA services requesting 11 hours/15 minutes day/evening hours per week and 0 nighttime hours per night. MassHealth denied appellant's request for PCA services based upon vague and confusing documents and because the clinical record did not indicate appellant required physical assistance with two or more activities of daily living because medical necessity had not been established. The denial was sent to a doctor for a physician's review and that doctor upheld the denial because the submitted documents did not show medical necessity. After hearing testimony from appellant, the MassHealth representative determined appellant did meet the criteria for two or more activities of daily living. (Testimony).

There were multiple modifications based upon MassHealth regulations. MassHealth modified Mobility, physical assist with stairs, from 5 minutes an episode, 2 episodes a day, 7 days a week to 0. MassHealth modified Bathing from 30 minutes an episode, 1 episode a day, 7 days a week to 0. After testimony from appellant, the MassHealth representative approved the time for Bathing. Therefore, the part of the appeal concerning Bathing is dismissed. MassHealth modified Grooming, Nail Care, from 10 minutes an episode, 1 episode a day, 1 day a week to 0; Grooming, Other, Lotion Care, from 5 minutes an episode, 1 episode a day, 7 days a week to 0. After testimony from appellant, MassHealth approved the requested time for Grooming, Nail Care and Other, Lotion. Therefore, the part of the appeal considering Grooming, Nail Care and Other, Lotion, is dismissed. MassHealth modified Grooming, Oral Care, from 2 minutes an episode, 2 episodes a day, 7 days a week to 0; MassHealth modified Grooming, Hair, from 5 minutes an episode, 1 episode a day, 7 days a week to 0. MassHealth modified Dressing from 10 minutes an episode, 1 episode a day, 7 days a week to 7 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified Dressing from 15 minutes an episode, 1 episode a day, 7 days a week to 0. MassHealth modified Undressing from 10 minutes an episode, 1 episode a day, 7 days a week to 0. After testimony from appellant, the parties agreed to 5 minutes an episode, 1 episode a day, 7 days a week for both Dressing and Undressing. Therefore, the part of the appeal concerning Dressing and Undressing is dismissed. MassHealth modified Meal Preparation from 20 minutes an episode, 5 days a week for lunch to 0 because the husband of appellant is responsible for making meals for appellant. After discussion between the parties, appellant agreed the time for Meal Preparation cannot be given because her husband is responsible for this task. Since appellant agrees with the modification of this task to 0, the part of the appeal considering Meal Preparation is dismissed. MassHealth modified Medical Transportation from 10 minutes a week to 0. After discussion between the parties and the approval of other tasks, MassHealth approved the requested time for this task. As there is no remaining dispute regarding this task, the part of the appeal concerning Medical Transportation is dismissed.

Findings of Fact

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

1. The appellant is a MassHealth member with a primary diagnosis of osteoarthritis. (Testimony; Ex. 4, p. 13).
2. MassHealth received a prior authorization request for PCA services requesting 11 hours/15 minutes day/evening hours per week. (Testimony; Ex. 4).
3. Initially, MassHealth denied PCA services due to vague and confusing documentation. After a physician review, the denial was upheld due to the lack of medical necessity. (Testimony).
4. The appellant filed this appeal in a timely manner on August 24, 2023. (Ex. 2).
5. After testimony from appellant, the MassHealth representative found appellant did qualify for PCA services. (Testimony).
6. At hearing, the parties were able to resolve disputes related to PCA assistance with Bathing; Grooming, Nail Care and Grooming, Other, Lotion; Dressing/Undressing; Meal Preparation and Medical Transportation. (Testimony).
7. Appellant requested PCA time assistance with Mobility, assist with stairs, as follows: 5 minutes an episode, 2 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 17).
8. MassHealth modified the time requested for Mobility, stairs, to 0. (Testimony).
9. Appellant requested PCA time assistance with Grooming, Oral Care, as follows: 2 minutes an episode, 2 episodes a day, 7 days a week and Grooming, Hair, as follows: 5 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 22).
10. MassHealth modified the time requested for Grooming, Oral Care and Grooming, Hair, to 0. (Testimony).

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

(1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.

(2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.

(3) The member, as determined by the personal care agency, 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.

(4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.

- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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 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 basic care such as bathing, personal hygiene, and grooming skills;
- (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.

Pursuant to 130 CMR 422.410(B), instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving personal care services; and

(c) other special needs approved by the Division as being instrumental to the health care of the member.

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;

(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; or

(G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (**emphasis added**).

The appeal is dismissed as to the following ADL's. MassHealth modified Bathing from 30 minutes an episode, 1 episode a day, 7 days a week to 0. After testimony from appellant, the MassHealth representative approved the time for Bathing. At hearing, the parties were able to resolve the disputes related to PCA assistance with Grooming, Nail Care and Grooming, Other, Lotion. MassHealth modified Grooming, Nail Care, from 10 minutes an episode, 1 episode a day, 1 day a week to 0; Grooming, Other, Lotion, from 5 minutes an episode, 1 episode a day, 7 days a week to 0. After testimony from appellant, MassHealth approved the requested time for Grooming, Nail Care and Grooming, Other, Lotion. Grooming, Oral Care and Grooming, Hair, are still in dispute. Regarding Dressing and Undressing, MassHealth allowed 0 time for these tasks. After testimony from appellant, MassHealth approved time for both tasks as follows: 5 minutes an episode, 1 episode a day, 7 days a week. This applies to Dressing and Undressing. MassHealth allowed 0 time for Meal Preparation but after testimony of appellant and the allowance of other ADL's, the time requested for Meal Preparation was approved. Time for Medical Transportation was initially denied by MassHealth but after testimony from appellant, MassHealth approved the time requested for this task.

Mobility:

Appellant requested 5 minutes an episode, 2 episodes a day, 5 days a week for physical assist with

stairs. (Testimony; Ex. 4, p. 17). MassHealth modified this time to 0. The MassHealth representative testified because this was an initial evaluation, there was a review by a registered nurse and an occupational therapist. (Testimony; Ex. 4, p. 8). The MassHealth representative testified appellant was found independent in mobility, toileting, eating and managing medications. (Ex. 4, p. 9; Testimony). Appellant also uses a walker to move around. (Ex. 4, pp. 10, 11, 13, 18; Testimony). In her testimony, appellant did not deny she could climb the stairs. She stated it takes her about 10 minutes. She testified her son comes up the stairs behind her to ensure she is not dizzy, does not fall or if she needs to rest or use an inhaler. (Testimony). The MassHealth representative asked appellant if her son stands behind her “in case” you need help, appellant replied, “well, yeah.” (Testimony). The regulations are clear. MassHealth will not cover assistance provided in the form of cueing, prompting, supervision, guiding, or coaching. 130 CMR 422.412 (C). Appellant did not deny she could climb the stairs, stating it takes her about 10 minutes. She also acknowledged her son was behind her while she climbed the stairs “in case” she needs help. The record shows appellant does not need any physical assistance with stairs. Appellant’s request for time for the task of Mobility is denied.

Grooming, Oral Care:

Appellant requested 2 minutes an episode, 2 episodes a day, 7 days a week for oral care, brushing her teeth. MassHealth modified this time to 0. The MassHealth representative testified that if appellant can eat, manage her medicine pills, and use the toilet independently, (Ex. 4, p. 9), appellant should be able to brush her teeth. All those tasks show a dexterity of the fingers. Appellant testified that she could hold and brush her teeth and stated they are dentures. Since appellant admitted in her testimony she can brush her own dentures, the requested time for Grooming, Oral Care, is denied.

Grooming, Hair:

Appellant requested 5 minutes an episode, 1 episode a day, 7 days a week for hair care in the form of brushing. MassHealth modified this time to 0. The MassHealth representative testified that appellant has shown she has the functional ability to do this task. She is independent in eating, managing her pills and use of the toilet. In her testimony, appellant admitted she can brush her own hair. The record reflects appellant can perform this task herself and she admitted as such in her testimony, therefore, the request for hours for Grooming, Hair, is denied.

In summary, based on the above, appellant’s request for 5 minutes an episode, 2 episodes a week, 7 days a week for Mobility, is denied. The request for 2 minutes an episode, 2 episodes a day, 7 days a week for Grooming, Oral Care, is denied. The request for 5 minutes an episode, 1 episode a day, 7 days a week for Grooming, Hair, is denied. Concerning Bathing, Dressing, Undressing, Meal Preparation and Medical Transportation, the parties either agreed to time for the task or MassHealth approved the requested time and there is no longer a dispute regarding these tasks. Therefore, the issues involving Bathing, Dressing, Undressing, Meal Preparation and Medical Transportation are dismissed.

Order for MassHealth

None.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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