

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Denied in part; Dismissed in part | Appeal Number: | 2307710 |
| Decision Date: | 12/6/2023 | Hearing Date: | 10/05/2023 |
| Hearing Officer: | Rebecca Brochstein | Record Closed: | 10/20/2023 |

Appearances for Appellant:

 Appellant
 Appellant's Sister/PCA

Appearances for MassHealth:

Donna Burns, R.N.



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

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|---------------------------|--------------------------------------|--------------------------|----------------------------------|
| Appeal Decision: | Denied in part; Dismissed in part | Issue: | Prior Approval (PCA Services) |
| Decision Date: | 12/6/2023 | Hearing Date: | 10/05/2023 |
| MassHealth's Rep.: | Donna Burns, R.N. | Appellant's Rep.: | Appellant's Sister/PCA |
| Hearing Location: | Board of Hearings (Telephonic) | Aid Pending: | No |

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated August 29, 2023, MassHealth modified the appellant's request for prior authorization for Personal Care Attendant (PCA) services by denying some of the time requested (Exhibit 1). The appellant filed this appeal in a timely manner on August 30, 2023, seeking approval of the denied time (130 CMR 610.015(B) and Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032). After hearing on October 5, 2023, the record was held open for the appellant to submit additional documentation (Exhibit 5).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services by approving only some of the time requested for several tasks.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

Summary of Evidence

The MassHealth representative, who is a registered nurse, appeared at the hearing telephonically and offered the following testimony: The appellant is a male in his mid-sixties with diagnoses that include traumatic brain injury, hemiplegia, cognitive impairment, and neuropathy. On August 2, 2023, a personal care agency submitted a prior authorization request on his behalf for personal care attendant assistance in the amount of 68.5 day/evening hours per week and two hours each night. On August 17, 2023, MassHealth modified the request and approved 57.25 day/evening hours per week and the two hours per night that were requested for the period of August 16, 2023, through August 15, 2024.

MassHealth modified the time requested for several tasks but at hearing it reversed three of the modifications (for repositioning, dressing, and medication administration). In addition, the appellant accepted the modifications for transfers/mobility, medication prefill, and “other” dressing needs (related to compression stockings). The two areas of modification that remained in dispute at the end of the hearing were for bathing transfers and skin integrity checks. The appellant also took issue with the start date of the prior authorization period.

Bathing transfers

The MassHealth representative testified that the provider requested time for bathing transfers in the amount of 15 minutes, twice per day, seven days per week. The PCA evaluation states that the appellant is dependent for a two-person transfer using a Hoyer lift to a rolling bath chair. MassHealth modified the request to allow fifteen minutes, once per day. The MassHealth representative stated that the time approved for bathing (45 minutes per day, as requested) includes some time for transfers. She also noted the appellant was also approved for special transfer time for toileting (15 minutes per day), stating that this time can be used for the bathing transfer as well because it is part of the same overall process.¹

The appellant’s sister (who is his PCA) appeared at the hearing telephonically and testified on his behalf. She described the process of the transfer for bathing as follows: The appellant requires two people to transfer him out of bed using the Hoyer lift. The transfer to the Hoyer must be done carefully, because he cannot adjust himself. The PCA ensures that all hooks are fastened and then uses the lift to shift him away from his bed. She then carefully lines up the shower chair underneath him, lowers him onto the chair, removes the harness pads and places a weight belt on him for stability. The PCA makes sure he is positioned correctly on the chair and then pushes the shower chair to the toilet. He stays on the toilet for approximately 30 minutes, and the PCA then moves the chair to the shower.

¹ The PCA evaluation reflects a separate entry for “special toileting transfer,” which is described in the notes as follows: “Dep for 2 Person transfer using hoyer lift to rolling shower chair with toilet seat for bowel movement. . . .” See Exhibit 4 at 26.

Skin integrity checks

The MassHealth representative testified that the PCA agency requested time for skin integrity checks in the amount of five minutes, twice per day. MassHealth denied this request in its entirety because it determined that this is not a PCA task. She stated that PCAs are not permitted to make assessments; rather, if the PCA notices a potential issue they are supposed to inform the appellant, who can then determine whether to call the doctor or a visiting nurse.

The appellant's representative testified that she was trained by nurses in a previous program to look for and treat skin breakdown. She stated that she does not want to have to call a nurse if a sore is already there, noting that the appellant frequently has episodes of skin breakdown. She argued that she wants to be proactive and has been trained to know what to do right away.

Start date of PA period

The appellant's sister argued that MassHealth should have approved the PA request with the start date requested by the PCA agency, which was July 13, 2023, and that MassHealth erroneously approved it to begin on August 16, 2023. The MassHealth representative responded that for initial prior authorization requests, MassHealth has 21 days to review and respond, and that services begin as of the date of MassHealth's determination. She testified that the PA packet was not submitted to MassHealth until August 2, 2023. The appellant's sister stated that she knew that MassHealth had 21 days to act but maintained that certain documentation reflected the start date would be in July. The record was held open after hearing for her to submit additional documentation. During the record-open period, she submitted a printout from the PA materials showing the agency had requested an effective date of July 13, 2023², as well as a letter from the agency stating that the appellant had submitted activity forms for more than the number of hours per week that MassHealth authorized. The letter indicates that the PA start date is August 16, 2023. See Exhibit 5.

Findings of Fact

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

1. The appellant is a male in his mid-sixties with diagnoses that include traumatic brain injury, hemiplegia, cognitive impairment, and neuropathy.
2. On August 2, 2023, the appellant's PCA agency submitted an initial evaluation and prior approval request for PCA services. The provider agency requested 68.5 day/evening hours per week and two hours each night. The documentation sets forth a requested PA start date of July 13, 2023, which was the date of the PCA evaluation.
3. On August 17, 2023, MassHealth modified the request and approved 57.25 day/evening

² This was the date of the PCA evaluation. See Exhibit 5.

hours per week and the two hours per night that were requested, for the period of August 16, 2023, through August 15, 2024.

4. MassHealth modified the time requested for several tasks. At hearing, it reversed three of the modifications (for repositioning, dressing, and medication administration), and the appellant accepted the modifications for transfers/mobility, medication prefill, and dressing needs related to his compression stockings.
5. The appellant requested PCA time for assistance with bathing transfers in the amount of 15 minutes, twice per day, seven days per week.
 - a. MassHealth modified the request to 15 minutes, once per day, seven days per week.
 - b. The evaluation states that the appellant is dependent for a two-person transfer using a Hoyer lift to a rolling bath chair.
 - c. The transfer at issue is from the appellant's bed into a rolling shower chair, which is then rolled into the bathroom for toileting, and then into the shower for bathing.
 - d. The appellant was approved for a special toileting transfer in the amount of 15 minutes, once per day, seven days per week.
6. The appellant requested PCA assistance for skin integrity checks in the amount of 5 minutes, twice per day, seven days per week.
 - a. The PCA evaluation states that the time is needed "to prevent/treat pressure sores and infections."
 - b. MassHealth denied the request in its entirety on the basis that this is not a service that is appropriately performed by a PCA.

Analysis and Conclusions of Law

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are

medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 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.

(B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following:

(1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

In this case, the appellant filed a request for prior authorization of PCA services, and MassHealth modified or denied the time requested for several PCA activities. After some of the modifications were resolved at hearing, the two activities that remain in dispute are bathing transfers and skin integrity checks.

Bathing transfers

The appellant requested PCA time for bathing transfers using a Hoyer lift in the amount of 15 minutes, twice per day, and MassHealth modified the request to allow this only once per day. This modification is supported by the record. The evidence indicates that the transfer at issue involves moving the appellant from his bed to a rolling shower chair, and that the appellant is rolled into the bathroom for toileting before the transfer to the shower. As the MassHealth representative pointed out, MassHealth approved a separate request of 15 minutes, once per day, for a toileting transfer. As this is all part of the same process, the request for the bathing transfer was a duplication. There was no error in MassHealth's modification to this request.

Skin integrity checks

The appellant requested PCA assistance for skin integrity checks in the amount of five minutes, twice per day, seven days per week. MassHealth denied this request on the basis that it is a skilled service that is not appropriate for a PCA to perform. There is no error in this determination. The MassHealth representative argued credibly that this task is not appropriately performed by a PCA. It is not among the PCA tasks identified in the regulations, and it requires skill beyond the level of a

PCA. Even if the appellant's PCA has previous experience in managing this task, it was not erroneous for MassHealth to determine that it is not a covered service under the PCA program.

Start date

Finally, the appellant contends that MassHealth erred in starting the prior authorization period as of the date of the determination (or a day earlier, as it did here), rather than as of the date requested by the PCA agency in the PA documentation. This contention is not supported by the regulations. Under 130 CMR 450.303(B)(3), which sets forth rules pertaining to prior authorization requests, a service is authorized on the date the MassHealth agency sends a notice of its decision to the member or someone acting on the member's behalf. In this case, MassHealth notified the appellant of its decision on August 17, 2023, and authorized services to begin one day before the notice, on August 16, 2023.³ The appellant is not entitled to an earlier start date.

This appeal is denied as to the modifications for bathing transfer and skin integrity checks, and as to the determination of the PA start date. It is dismissed as to the issues that were resolved at hearing.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum

³ It is not clear from the record whether MassHealth sent out a separate notice to the appellant or someone acting on his behalf on August 16.