

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Denied in Part; Dismissed in Part | Appeal Number: | 2310441 |
| Decision Date: | 01/12/2024 | Hearing Date: | 11/30/2023 |
| Hearing Officer: | Mariah Burns | | |

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN, Clinical Nurse Reviewer for
Optum



*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

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| Appeal Decision: | Denied in Part; Dismissed in Part | Issue: | Prior Authorization; Personal Care Attendant Services |
| Decision Date: | 01/12/2024 | Hearing Date: | 11/30/2023 |
| MassHealth's Rep.: | Donna Burns, RN | Appellant's Rep.: | Pro se |
| Hearing Location: | Remote | Aid Pending: | Yes |

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 October 10, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.204(A), 130 CMR 422.410(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on October 25, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

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

Summary of Evidence

The appellant is an adult MassHealth member and was joined at hearing by his two personal care attendants. MassHealth was represented by a clinical nurse reviewer for Optum, which manages MassHealth's PCA program. All parties appeared by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from a primary diagnosis of idiopathic neuropathy with secondary issues related to a history of falls, obesity, back pain, diabetes, and a traumatic brain injury with memory loss. Prior to this request, the appellant was receiving 49 hours of PCA services through MassHealth. MassHealth received a prior authorization request on the appellant's behalf requesting 52.25 hours of weekly PCA services. On October 10, 2023, MassHealth modified the request and approved the appellant for 47 hours of weekly services.

Modifications were made in the areas of mobility, mobility transfers, bathing, bladder care, and medication assistance. After hearing, the parties agreed to the following modifications:

- **Mobility transfers:** approved at 5 minutes, four times per day, seven days per week;
- **Bladder care:** appellant agreed to at 12 minutes, six times per day, seven days per week.

Thus, after hearing, disputes remained over mobility, bathing, and medication assistance.

Mobility

The appellant requested 5 minutes, 6 times per day, 7 days per week for assistance with mobility. The MassHealth representative reported that this was modified from 5 minutes to 2, because the requested time is longer than typically required for someone with the appellant's needs. She testified that, in this context, mobility involves a member's ability to move from one room to another. The appellant reported that he is able to walk on his own and he does not use a device to walk, although he does have pain when his sciatica acts up, which does not follow a definitive pattern.

Bathing

The appellant requested 30 minutes, one time per day, seven days per week for assistance with bathing. The MassHealth representative reported that this was modified from 30 minutes to 25, because the requested time is longer than typically required for someone with the appellant's needs. The appellant and his representatives testified that he has a very small bathroom, which makes bathing him take much longer. The appellant reported that he can stand up on his own and wash his own front and his head. His PCAs assist him with scrubbing his back, supervising him to ensure he doesn't fall, and helping him get in and out of the shower. The appellant and his representatives estimated that he spends about an hour in the shower every day.

Medication Assistance

The appellant requested 5 minutes, three times per day, seven days per week for assistance with taking his medication. The MassHealth representative reported that this was modified from 5 minutes to 2, because the requested time is longer than typically required for someone with the appellant's needs. The appellant's representative reported that it takes about 7-8 minutes each time the appellant needs to take his medication. The PCA uses a list and ensures that the appellant is taking all the right pills, but the appellant can take the pills out of the box and take the medication himself. The MassHealth representative argued that this is more supervising than hands-on assistance.

Findings of Fact

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

1. The appellant is an adult MassHealth Standard member who suffers from idiopathic neuropathy, a history of falls, obesity, back pain, diabetes, and a traumatic brain injury with memory loss. Exhibit 4, Exhibit 5 at 8. Prior to the notice at issue, he was receiving 49 hours of PCA services from MassHealth. Testimony.
2. MassHealth received a prior authorization request on the appellant's behalf requesting 52.25 total weekly hours of PCA services. After reviewing the appellant's application, MassHealth modified the request and approved 47 hours. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of mobility, mobility transfers, bathing, bladder care, and medication assistance. Exhibit 1.
4. After hearing testimony, MassHealth and the appellant agreed to the following hours:
 - **Mobility transfers:** approved at 5 minutes, four times per day, seven days per week;
 - **Bladder care:** appellant agreed to at 12 minutes, six times per day, seven days per week.

Testimony.

5. The appellant requested 5 minutes, 6 times per day, 7 days per week for assistance with mobility. MassHealth modified this request to 2 minutes, 6 times per day, 7 days per week. Exhibit 5 at 11, Testimony.
6. The appellant requested 30 minutes, one time per day, seven days per week for assistance with bathing. MassHealth modified this request to 25 minutes, one time per day, 7 days per week. Exhibit 5 at 14, Testimony.

7. The appellant requested 5 minutes, 3 times per day, 7 days per week for assistance with taking his medication. MassHealth modified this request to 2 minutes, 3 times per day, 7 days per week. Exhibit 5 at 21, Testimony.
8. All modifications were made because the requested time is more than is typically approved for someone with the appellant's needs. Exhibit 1, Testimony.
9. The appellant can ambulate from room to room on his own and does not use any assistive devices to walk. Testimony.
10. The appellant can wash his own front and his head and does not require assistance to stand in the shower. His PCA washes the appellant's back, assists him with getting in and out of the shower, and is present to ensure the appellant does not fall, though the PCA does not physically support the appellant in the shower. Testimony.
11. The appellant can take his own medication out of the pill box and self-administer. His PCA supervises his medication intake and ensures he is taking the correct pills. Testimony.
6. MassHealth does not pay for any PCA services that could be considered supervising. Testimony.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...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.

130 CMR 450.204(A)-(B).

As the MassHealth representative and the appellant agreed as to the approved hours for mobility transfers and bladder care, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant's approved hours to include the following:

- Mobility transfers: approved at 5 minutes, four times per day, seven days per week;
- Bladder care: appellant agrees to modification at 12 minutes, six times per day, seven days per week;

Thus, at issue in this case is whether the appellant met his burden of proof in establishing medical necessity for more approved PCA time than MassHealth approved for mobility, bathing, and assistance with medication.

Mobility

The definition for mobility can be found at 130 CMR 422.410(A)(1) and involves "physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking,

or use of prescribed durable medical equipment.” In this case, the appellant reported that he can walk on his own without using a device for assistance. He further testified that he does not use his PCA to walk around. As such, he did not provide evidence that he requires five minutes of assistance for mobility, particularly where MassHealth approved two minutes despite his testimony. The appeal with respect to mobility is denied.

Bathing

MassHealth reported that the appellant was approved for 25 minutes of daily bathing because the 30 minutes of requested time is more than is ordinarily required for someone with the appellant’s needs. The appellant and his representative both testified that the main issue with bathing the appellant is that his bathroom is small. However, they reported that the appellant can clean his own front, and while the PCA may be there to ensure the appellant does not fall, the appellant does not require assistance to stand in the shower from the PCA. As part of the PCA program, MassHealth does not cover “assistance in the form of cueing, prompting, supervision, guiding, or coaching...[and] services provided by family members.” 130 CMR 422.412. The appellant provided no evidence that supports the assertion that it is medically necessary for the PCA to spend 30 minutes of hands-on time assisting him with showers every day. The appeal with respect to bathing is denied.

Medication Assistance

The definition of medication assistance can be found at 130 CMR 422.410(A)(2) and involves “physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered.” In this case, the appellant and his representative testified that the appellant can take his medication out of the pill box and take the medicine himself. They reported that the PCA double checks each pill to make sure the appellant is taking the right medication, but they did not provide any evidence that the PCA *physically assists* the appellant in taking his medication. As such, the appellant did not show that he is entitled to five minutes for medication assistance when MassHealth has already approved two minutes. The appeal with respect to medication assistance is denied.

For the foregoing reasons, the appeal is dismissed with respect to mobility transfers and bladder care. With respect to mobility, bathing, and medication assistance, the appeal is hereby denied.

Order for MassHealth

Modify the appellant’s approved PCA services to include five minutes, four times per day, seven days per week for mobility transfers. Remove Aid Pending.

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

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