

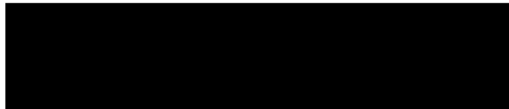
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2310533
Decision Date:	01/18/2024	Hearing Date:	12/08/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN



*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:	Prior Authorization; PCA; Supervision
Decision Date:	01/18/2024	Hearing Date:	12/08/2023
MassHealth's Rep.:	Kelly Rayen, RN; Mary-Jo Elliott, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote	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 September 21, 2023, MassHealth modified the appellant's request for personal care attendant services, allowing fewer hours than were requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on October 27, 2023. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining that some of the appellant should be allowed less time than requested.

Summary of Evidence

On or around August 22, 2023, the appellant's personal care management ("PCM") agency submitted a prior authorization reevaluation requesting personal care attendant ("PCA") services

for the time period of September 27, 2023, through September 26, 2024. The appellant requested 131 hours and 15 minutes per week of PCA services. The appellant is in his [REDACTED], and he has a primary diagnosis of spastic quadriplegia. He has additional diagnoses including Asthma, sleep apnea, ataxia, contractures, and a history of colitis with hospitalization, multiple urinary tract infections, and skin breakdown to left buttock. (See Exhibit 8, p. 9.)

MassHealth made six modifications to day/evening services and one modification to nighttime services and approved 93 hours and 45 minutes per week. The first modification was to the category of bathing. The appellant requested 35 minutes for bathing twice per day (490 minutes per week). MassHealth allowed 35 minutes for a morning shower, but only 20 minutes for a quick wash in the evening (385 minutes per week). MassHealth's representative explained that they expected the evening wash to be a quick wash in the appellant's bed, and it should therefore take less time than the morning wash. The appellant testified that sometimes the evening washing does take less time, but he is often incontinent of both bladder and bowel, and he has to be lifted in a mechanical lift, fully changed and washed again in the evening. He also testified that his morning showers often take 40 minutes, just counting the time in the shower and not considering the time it takes to transfer to and from the shower. When asked why his showering takes so long, the appellant responded that he requires frequent repositioning in his shower chair because he is strapped in. Because everything is slippery, he needs to be repositioned frequently to avoid slipping out of the chair. Furthermore, this is all active, hands-on assistance because the appellant cannot be left alone in the shower. The evening wash on average takes at least 35 minutes. Finally, the appellant testified that this time does not actually reflect all of the times he spends being cleaned, as he often requires additional cleansing throughout the day and night. MassHealth's representative pointed out that the appellant's description included various services that could have been captured under other categories, such as repositioning or bladder and bowel care. However, MassHealth did not identify any duplicative time in specific.

The next three modifications were in the category of grooming. The appellant had requested 5 minutes per day for hair care, which was approved, but there was also a request for 15 minutes per week that was unexplained. MassHealth restored all of the requested time for hair care because the appellant testified that he has scaly, dry, itchy scalp, and the PCA will use a comb to scratch his head.

Regarding shaving, the appellant requested 20 minutes twice a week for assistance with shaving (40 minutes per week.). MassHealth allowed 10 minutes twice a week (20 minutes per week), because the time seemed longer than should be required per shave. The appellant's representatives testified that his face is very sensitive, and his skin can get scaly, especially around his mouth due to uncontrollable drooling. They have to be very careful when shaving him as his skin breaks down easily. The appellant's brother testified that he is a nurse and has time the duration of shaving, and that it is around 15 to 20 minutes per shave. He also believed that the appellant was shaved more frequently than twice per week, but no one was able to definitively state how frequently the appellant was shaved.

In the “other” subcategory, the appellant requested 10 minutes once a day and five minutes four times per day (210 minutes per week total). The notes reflect that the appellant received “wound care QD (coccyx/R heel)” and “skin care 4x daily and overnight to prevent further skin breakdown.” MassHealth’s representative testified that they approved 10 minutes per day for lotion and skin care, but denied the five minutes four times per day because wound care is a skilled task that a PCA is not meant to provide (70 minutes per week approved). The appellant and his representatives were confused by the manner in which this time was requested. He testified that he is lotioned twice a day to have cremes and lotions applied to his scales, as well as medicated ointments for his groin and coccyx. He also needs sunscreen if he ever goes outside. They also explained that they have a nurse who comes in and manages serious wound care, but there are usually simple band aids and other dry dressings that are needed to help maintain the appellant’s skin. They believed that this assistance exceeded the total 30 minutes per day requested.

The final day/evening modification made was to Cpap assistance. The appellant had requested six minutes, nine times per day during day/evening hours to help him with his Cpap (378 minutes per week). MassHealth approved six minutes twice a day to reflect the time for putting the Cpap on the appellant before bed and helping him take it off in the morning (84 minutes per week). The appellant agreed that he does not use the Cpap during the day. However, he testified that he goes to bed at 8:30. Later, the appellant and his representatives testified that he requires Cpap adjustments about every 15 minutes throughout the night.

The appellant’s contention regarding Cpap assistance was that he requested 45 minutes six times per night to assist him with the Cpap. The appellant’s primary care physician wrote a letter dated November 13 stating that the appellant “must wear an AutoPAP every night but due to his quadriplegia he requires an awake home attendant at night for at least 6 hours to help him manage the mask and headgear.” (Exhibit 6, p. 3.) Similarly, the appellant’s sleep doctor wrote on November 6, “[h]e must wear AutoPAP every night but due to his paraplegia he requires an awake home attendant at night for at least 6 hours to help him manage the mask and headgear.” (Exhibit 6, p. 4.)

An updated letter from the appellant’s PCP, date December 5, 2023, states in part:

He also requires a CPAP machine and/or oxygen at night due to his severe Obstructive Sleep Apnea and requires monitoring for his safety due to his respiratory issues, lack of strength for position changes or to prevent choking, and episodes of apneas during sleep.

Currently, [the appellant] has a PCA for several shifts every day. PCAs help him from 8-11 am, 5-9pm, 9pm-12am, 12am-7am. ... [F] for continued independent living, he requires more hours for a personal care attendant for the 24 hour day. Previously he had 132 hours per week. Now just 96 hours/week is insufficient to cover his nighttime needs including both

applying and adjusting and removing cpap and monitoring for positioning needs at nighttime.

Over the past 2 years, [the appellant's] needs have escalated requiring more hours of supervision and decreased time spent in one position. So cutting his hours has severely decreased his ability to safely live independently.

At a minimum [the appellant] needs reinstatement of his prior nighttime hours to a minimum of 132 hours/week. For all of the above reasons, it is necessary for Robert to have PCA assistance and supervision coverage during the additional requested hours as well as his current hours.

(Exhibit 7.)

These letters were reviewed during the hearing, and MassHealth's representative testified that MassHealth cannot allow time for supervision or monitoring. The agency reduced the requested 45 minutes six times per night down to six minutes three times per night. MassHealth's representative testified that adjusting the Cpap mask should not take more than six minutes per instance, when the only compensated time for the PCA would be the hands-on putting on, removing, or adjusting the Cpap mask. The appellant agreed that each interaction his PCA has with his mask only takes a few minutes of hands-on assistance, not 45 minutes. However, he argued that it is not just an occasional adjustment. The appellant has lung problems and generates a lot of oral mucus, which causes a lot of coughing in his sleep. The PCA will often wipe his drool and readjust the mask while the appellant is asleep to make sure it does not fall off, as it could be life threatening if it does. The appellant described his Cpap mask as a nasal pillow that does not cover his mouth. This was an intentional design because the appellant's mouth does not close while he sleeps. The appellant's representatives are concerned that without constant overnight supervision, the appellant could die. They testified that it is unsafe for the appellant to remain in the community if he cannot have full overnight coverage.

The appellant was asked if he could shift instrumental activities of daily living ("IADL") hours to the nighttime so that his PCA would have compensable activities to perform in between the adjustments that were made every 15 minutes. The appellant testified that his PCA already does that, and most of the laundry and meal preparation occurs overnight.¹ They further testified that this time for supervision has been approved in the past.

Findings of Fact

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

¹ The appellant is approved for approximately 15 hours per week of assistance with in-home IADL assistance.

- 1) The appellant is in his [REDACTED], and he has a primary diagnosis of spastic quadriplegia. He has additional diagnoses including Asthma, sleep apnea, ataxia, contractures, and a history of colitis with hospitalization, multiple urinary tract infections, and skin breakdown to left buttock. (Exhibit 8, p. 9.)
- 2) On or around August 22, 2023, the appellant's PCM agency submitted a prior authorization reevaluation requesting PCA services for the time period of September 27, 2023, through September 26, 2024. The appellant requested a total of 131 hours and 15 minutes per week of PCA services. (Exhibit 8, p. 3.)
- 3) Through a notice dated September 21, 2023, MassHealth approved 93 hours and 45 minutes per week. MassHealth made modifications to the day/evening services of bathing, shaving, hair care, "other" Grooming assistance, and Cpap assistance. MassHealth also modified nighttime Cpap assistance. (Exhibit 8, p. 6.)
- 4) Regarding bathing, MassHealth modified the request for 35 minutes twice per day down to 35 minutes once a day and 20 minutes once a day because MassHealth expects the second bathing of a day to take less time than the primary bathing. (Testimony by MassHealth's representative.
 - a. The appellant's "quick wash" takes at least 35 minutes because it includes transferring into a mechanical lift, and often requires cleansing from incontinence of the bladder and bowels. (Testimony by the appellant.)
 - b. The appellant's primary shower also takes more than 35 minutes due the need for regular readjustments to ensure he safely remains in the shower chair. (Testimony by the appellant.)
- 5) MassHealth restored the 15 minutes per week the appellant requested for scratching his head. (Testimony by MassHealth's representative.)
- 6) The appellant requested 20 minutes twice a week for shaving. MassHealth allowed 20 minutes per week total because this was more time than it should take to shave. (Testimony by MassHealth's representative.
 - a. The appellant requires between 15 and 20 minutes per shave due to his scaly, sensitive skin. The appellant is sometimes shaved more frequently than twice per week. (Testimony by the appellant's representatives.)
- 7) The appellant requested 30 minutes per day for "other" grooming assistance. The breakdown on the request is unclear, as the notes indicate the appellant requires both "wound care" and "skin care" four times per day, but one service is requested as 10 minutes per day, and the other is requested as five minutes four times per day. (Exhibit 8, pp. 17-18.)

- a. MassHealth approved 10 minutes per day for lotion and skin care, but denied the four minutes five times per day because wound care is a skilled task. (Testimony by MassHealth's representative.)
 - b. The appellant is lotioned twice a day not including other applications of cremes or sunscreen. (Testimony by the appellant's representatives.)
 - c. The appellant receives wound care from a nurse, but he also receives more simple assistance from his PCA in the form of band aids, dry dressings, and other intervention necessary to assist the appellant's skin integrity totaling at least 20 minutes per day. (Testimony by appellant's representative.)
- 8) The appellant requested nine instances of Cpap assistance during day/evening hours at nine minutes per instance. He requested nighttime Cpap assistance at 45 minutes six times per night. (Exhibit 8, p. 25.)
- a. MassHealth allowed day/evening Cpap assistance twice, once to put the mask on before bed and once to take it off in the morning. MassHealth allowed three, six-minute adjustments throughout the night because the requested time was mostly for supervision and monitoring. (Testimony by MassHealth's representative; Exhibit 8, pp. 6, 25-26.)
 - b. The appellant's PCA physically checks the Cpap every 15 minutes while he is asleep, wiping drool, and adjusting the mask due to frequent coughing and movement. (Testimony by the appellant's representatives.)
 - c. The rest of the time during the night was requested for supervision and monitoring, as the appellant cannot be left alone without risk of death. (Testimony by the appellant's representatives; Exhibits 6 and 7.)

Analysis and Conclusions of Law

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

- (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 PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover time waiting or downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

This appeal is DISMISSED in part with regards to hair grooming, as MassHealth restored 15 minutes per week for scratching the appellant's head, therefore there is no longer a MassHealth action to be reviewed through a fair hearing decision. (130 CMR 610.051(B).)

This appeal is APPROVED in part with regards to bathing. The appellant and his representatives testified credibly that even the evening "quick wash" takes at least 35 minutes to complete, and that the appellant spends 40 minutes actively in the shower. The 35 minutes requested for bathing included the transfer time and time washing hair. This time could have been better broken out, but that does not diminish the time needed to below the time requested. This restores 105 minutes per week to the appellant's hours.

This decision also APPROVES in part the requested time for shaving. The appellant's brother explained the difficulties and care with which the appellant's skin must be treated during shaving. He credibly testified that shaving takes between 15 and 20 minutes. I will allow 17 minutes twice per week. The appellant is welcome to request more instances of shaving per week on his next reevaluation if he is shaved more frequently than twice per week. This restores 14 additional minutes per week.

I am also persuaded that the appellant requires additional skin care attention totaling 20 minutes per day. Therefore, this appeal is APPROVED in part with regards to “other” grooming. Again, the request does not clearly categorize what this time is for, but the appellant’s representatives clearly explained the appellant’s difficulties with skin integrity, including multiple minor problems that would require daily attention. This is in addition to general lotion maintenance that MassHealth agreed to approve at 10 minutes per day. This restores 140 minutes per week.

The final issues regarding assistance with the Cpap is APPROVED in part and DENIED in part. It is undisputed that much of the time the appellant requested under the category of Cpap assistance is for “supervision” or “monitoring.” The appellant may be correct that this is a medically necessary service for him to safely remain in the community, but it is also explicitly excluded from covered services under the PCA program. The appellant’s representatives testified that he requires some physical adjustment or assistance every 15 minutes to ensure that he is safely sleeping, such as wiping drool or readjusting the Cpap mask.

With regards to the day/evening Cpap adjustments. The appellant testified that he does not wear the Cpap during the day, but that he goes to bed at 8:30. This leaves 3.5 day/evening hours during which he may require adjustments. The requested seven additional adjustments reflect an adjustment every half hour, and it is APPROVED in part. This restores 294 minutes per week.

Regarding nighttime adjustments, between midnight and six am (the nighttime PCA hours), there could be as many as 24 adjustments to the appellant’s Cpap. MassHealth approved six minutes per adjustment; at 24 adjustments per night, that allows 144 minutes per night. This appeal is APPROVED in part with the nighttime Cpap assistance to the extent that it involves frequent hands-on assistance. This approval restores 126 minutes per night, or 882 minutes per week. To the extent that the appellant requests assistance with monitoring or supervision for his Cpap during the night, this appeal must be DENIED in part pursuant to 130 CMR 422.412(C).

Order for MassHealth

Restore the modified time as described in this decision. All requested time shall be restored for: hair care (15 minutes per week), bathing (105 minutes per week), “other” grooming (140 minutes per week), day/evening Cpap assistance (294 minutes per week). Partial restorations shall be allowed for shaving (14 minutes per week), and nighttime Cpap assistance (882 additional minutes per week). The total allowed time should be 6,984 minutes per week or approximately 116 hours and 30 minutes per week.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215
Appellant's Representative: Patricia Muldoon, 50 Parkview Dr. Hingham, MA 02043