

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2310943
Decision Date:	01/25/2024	Hearing Date:	12/07/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown

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:	Prior Authorization
Decision Date:	01/25/2024	Hearing Date:	12/07/2023
MassHealth's Rep.:	Robin Brown	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone	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 October 11, 2023, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant filed this appeal in a timely manner on November 6, 2023. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services pursuant to 130 CMR 422.000.

Summary of Evidence

The appellant is an adult who has diagnoses of diabetes, high blood pressure, depression, decrease

in vision, neuropathy in all extremities and a left leg amputation below the knee. (Testimony; Exhibit 4). On September 23, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services from Boston Center for Independent Living (BCIL). (Testimony; Exhibit 4).

The appellant requested 41.75 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 4). MassHealth modified this request and approved 30.5 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 4). The dates of service are October 6, 2023 through October 5, 2024. (Testimony; Exhibit 4). MassHealth modified the time requested for 5 tasks. (Testimony; Exhibit 4).

Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for mobility (3 minutes, 6 times each day, 7 days each week) and adjusted the modification made to the time for medication administration (4 minutes, 3 times each day, 7 days each week). The appellant agreed with these adjustments and acknowledged that only 3 modifications remained at issue.

The appellant requested 30 minutes, 1 time each day, 7 days each week for assistance with bathing and 8 minutes, 1 time each day, 7 days each week for assistance with washing hair. MassHealth approved the time requested for bathing but denied the time requested for washing hair as MassHealth considered that in the time requested for bathing. The MassHealth representative testified that records indicate that the appellant requires moderate assistance with bathing. The request states that the PCA “assists [with] transfers in/out of the bathroom/bathtub/shower chair, assisting most washing, rinsing, drying”. The request states that the right foot wound must be covered when showering, and the neuropathy, right foot pain, mobility, strength, endurance and below-knee amputation make the appellant a risk for falls. The MassHealth representative testified that the agency considers moderate assistance as one where the individual is performing 50% of the task.

The appellant testified that she uses the sink to wash her hair and does not always use the shower due to her need for wound care. The appellant testified that at times she bathes from the bedroom with the PCA using a bucket that needs to be changed at least three times over the course of the bathing and hair washing process. The appellant testified that they often use two rooms and several buckets for bathing which makes it more complicated.

The appellant requested 5 minutes, 2 times each day, 7 days each week for assistance with a grooming task listed as diabetic foot care and the application of moisturizer. MassHealth denied the time requested. The MassHealth representative testified that the services requested do meet the appropriate standards of care and the time was longer than ordinarily required to perform the task.

The appellant testified that the PCA performs daily wound cleaning along with the application of moisturizer. The appellant testified that she has nursing services but not for this purpose. The

appellant testified that the PCA does a better job in cleaning and changing the dressing on the wound than a nurse. The appellant's representative noted that the nurse cannot come each day or on weekends to treat the wound and it requires more frequent care. The appellant testified that the PCA is also performing nursing services because nurses are not available to perform these tasks.

The MassHealth representative noted that there has been no request for wound care in the last year. The MassHealth representative testified that wound care is a skilled task that would ordinarily be performed by a nurse or possibly a trained family member, not a PCA. The MassHealth representative testified that the regulations governing medical necessity state that the services must be of a quality that meets professionally recognized standards of health care and be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)).

The appellant requested 75 minutes each day for assistance with meal preparation. MassHealth modified this request and approved 65 minutes each day for assistance with meal preparation. The request was for assistance with preparation of lunch and dinner. The MassHealth representative testified that the modification was made as the time requested was longer than what is ordinarily required for someone with the appellant's physical needs.

The appellant testified that the PCA needs time to cook meals in the oven due to the appellant's high cholesterol levels. The MassHealth representative responded that the program only authorizes time for when the PCA is performing the task, not the time it takes for food to cook in the oven. The appellant testified that she has breakfast, lunch, dinner and snacks. The MassHealth representative noted that the Personal Care Management (PCM) agency only requested time for assistance with preparing lunch and dinner.

The appellant testified that she cannot participate in the task of meal preparation and the food that she eats such as rice, beans, chicken or beef in the oven and vegetables take time to prepare and if things are not done correctly, the food will contain bacteria. The appellant testified that rice can take up to 45 minutes to cook and it also takes time to cook beef and prepare a salad. The appellant's representative noted that the food that the appellant eats, rice, beans and vegetables involve constant preparation. Records indicate that the appellant's family members prepare breakfast. The appellant testified that her meals take longer than ordinarily required and it depends on the meal as to how long it takes to prepare and cook the meal.

Findings of Fact

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

1. The appellant is an adult who has diagnoses of diabetes, high blood pressure, depression, decrease in vision, neuropathy in all extremities and a left leg amputation

below the knee.

2. On September 23, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services from Boston Center for Independent Living (BCIL).
3. The appellant requested 41.75 day/evening hours and 2 nighttime hours.
4. MassHealth approved 30.5 day/evening hours and 2 nighttime hours.
5. The dates of service are October 6, 2023 through October 5, 2024.
6. MassHealth originally modified the time requested for 5 tasks.
7. At hearing, MassHealth restored the time requested for mobility (3 minutes, 6 times each day, 7 days each week).
8. At hearing, MassHealth offered and the appellant agreed to a modification made to the time approved for medication administration (4 minutes, 3 times each day, 7 days each week).
9. The appellant requested: 30 minutes, 1 time each day, 7 days each week for assistance with bathing.
10. The appellant requested 8 minutes, 1 time each day, 7 days each week for assistance with washing hair.
11. MassHealth approved the time requested for bathing.
12. MassHealth denied the time requested for washing hair.
13. The appellant uses a sink to wash her hair.
14. MassHealth considered the time for washing hair in the approval of time for bathing.
15. The request for PCA services states that the PCA “assists [with] transfers in/out of the bathroom/bathtub/shower chair, assisting most washing, rinsing, drying”.
16. The appellant has a wound in her right foot.
17. The right foot wound must be covered when showering.
18. The appellant’s neuropathy, right foot pain, mobility, strength, endurance and below-knee amputation make the appellant a risk for falls.

19. The appellant does not always use a shower due to the need for wound care.
20. At times, the appellant is bathed in her room.
21. The appellant requested 5 minutes, 2 times each day, 7 days each week for assistance with diabetic foot care and the application of moisturizer.
22. MassHealth denied the time requested for assistance with diabetic foot care and the application of moisturizer.
23. The MassHealth determined that the services requested for diabetic foot care do not meet professionally recognized standards of health care.
24. Assistance with wound care is typically performed by a nurse.
25. The PCA has not received any training in providing this service.
26. The appellant did not request time for wound care last year.
27. The appellant receives nursing services.
28. The nurse does not always provide wound care.
29. The appellant requested 75 minutes each day for assistance with meal preparation.
30. MassHealth approved 65 minutes each day for assistance with meal preparation.
31. The appellant requested time for assistance in preparing lunch and dinner.
32. MassHealth determined that the time requested for meal preparation was longer than ordinarily required to prepare meals.
33. The PCA often prepares meals using the oven and cooks items such as rice and beans.

Analysis and Conclusions of Law

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). 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 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 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. assistance with medications or other health related needs;
 - c. bathing/grooming;
 - d. dressing or undressing;
 - e. passive range-of-motion exercises;
 - f. eating; and
 - g. toileting.
- (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets these conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as "medically necessary" if 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. (130 CMR 450.204(A)). 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(B)). A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for mobility (3 minutes, 6 times each day, 7 days each week). Upon hearing testimony and reviewing evidence at hearing, MassHealth approved, and the appellant agreed to, 4 minutes, 3 times each day, 7 days each week for medication administration. (130 CMR 422.410; 130 CMR 450.204). As MassHealth agreed to adjust their decision and approve the time for tasks noted above and the appellant did not challenge any modifications made at hearing related to these tasks, the appeal associated with those tasks is dismissed. (130 CMR 610.051(B)).

Activities of daily living include physically assisting a member with bathing, personal hygiene, or grooming. (130 CMR 422.410(A)(3)). The appellant did not provide sufficient evidence or

testimony regarding the need to wash her hair at another time and location other than that approved by MassHealth. Instead, the records state that the PCA “assists [with] transfers in/out of the bathroom/bathtub/shower chair, assisting most washing, rinsing, drying”. They do not indicate that the appellant is unable to utilize such equipment and perform all tasks associated with bathing, such as washing hair, during the time approved by MassHealth. The appellant testified that she does utilize the bathroom at times and did not clearly explain a reason for not doing so when it came to the time for washing hair. As the appellant did not provide sufficient testimony or evidence regarding the need for a separate time or location for washing hair, this part of the appeal is denied.

MassHealth was correct in denying time requested for diabetic foot care and the application of moisturizer. The basis for MassHealth’s decision regarding the performance of the task by an untrained, non-skilled professional has substantial merit. The regulations specifically state that 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(B)).

The appellant testified that the treatment was for wound care. The regulations specifically define activities of daily living and wound care is not among those activities. (130 CMR 422.410(A)). In addition to such services not being included in the regulatory definition of activities of daily living for the PCA program, the regulations governing nursing services state that such services are those that must be provided by a registered nurse or a licensed practical nurse to be safe and effective, considering the inherent complexity of the service, the condition of the patient, and accepted standards of medical and nursing practice. (130 CMR 438.410(A)(1)). The regulations state that some services are nursing services based on complexity alone. (130 CMR 438.410(A)(2)). The testimony presented by both parties regarding the complexities in the appellant’s care demonstrates that the decision made by MassHealth denying time for this task was correct to ensure safe and appropriate treatment of the appellant’s condition. This part of the appeal is denied.

Instrumental activities of daily living include meal preparation and clean-up. (130 CMR 422.401(B)(2)). The regulations define this task as physically assisting a member to prepare meals. (130 CMR 422.401(B)(2)). The testimony and evidence presented by the appellant regarding the need for time for the food to cook is not physical assistance. Additionally, the regulations specifically state that the PCA program does not cover services for supervision. (130 CMR 422.412(C)). Waiting for a meal to cook is a form of supervision so not a covered service. The decision made by MassHealth to approve 65 minutes for meal preparation was correct. This part of the appeal was denied.

This appeal is dismissed in part and denied in part.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve the following as of October 6, 2023:

- Mobility - 3 minutes, 6 times each day, 7 days each week
- Medication Administration - 4 minutes, 3 times each day, 7 days each 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

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

