

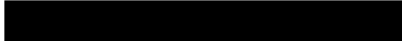
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Denied-in-part; Dismissed-in-part	Appeal Number:	2311378
Decision Date:	2/7/2024	Hearing Date:	12/14/2023
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, R.N., Clinical Appeals Reviewer,
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

Appeal Decision:	Approved-in-part; Denied-in-part; Dismissed-in-part	Issue:	Personal Care Attendant Services
Decision Date:	2/7/2024	Hearing Date:	12/14/2023
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	<i>Pro se</i> ; Daughter/PCA
Hearing Location:	Board of Hearings (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 11/2/2023, MassHealth informed Appellant that it was modifying her prior authorization (PA) request for personal care attendant (PCA) services. See Exhibit 1 and 130 CMR 450.204.(A)(1). Appellant appealed the notice in a timely manner on 11/13/2023. See 130 CMR 610.015(B); Exhibit 1, p. 2. Modification of a PA request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for authorization of PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for authorization of PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant and her daughter, who also serves as her personal care attendant (PCA), appeared at the hearing. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is an adult MassHealth member under the age of 65 and has primary diagnoses of frailty and weakness due to a history of two cerebral vascular accidents (CVAs) in 2018 and 2020, respectively, and a myocardial infarction in 2019 with stent placement. See Exh. 4, pp. 9-10. Appellant's additional diagnoses include diabetes, kidney disease, neuropathy in the bilateral lower extremities, urine incontinence, visual impairment, and hypertension. Id.

On 9/29/23, Appellant underwent an initial evaluation for personal care attendant (PCA) services. Id. at 11. The evaluation was performed by an occupational therapist (OT) and registered nurse (RN) from Appellant's personal care management (PCM) agency, LifePath, Inc. (hereinafter "LifePath"). Id. Based on its evaluation, LifePath sent MassHealth a request on 10/17/23 seeking prior authorization (PA) for 68 hours and 30 minutes per week of PCA services from 11/2/2023 through 11/1/2024. Id. at 3.

On 11/2/2023, MassHealth modified Appellant's PA request by approving 51 hours and 15 minutes per week¹ of PCA services for the requested one-year PA period. See Exh. 1. Specifically, MassHealth modified the time and/or frequency for the following eight (8) categories of activities of daily living (ADLs): (1) transfers, (2) bathing, (3) dressing, (4) undressing, (5) bladder care, (6) bowel care, (7) medication prefill, and (8) subcutaneous injections. See Exh. 1. The MassHealth representative testified that MassHealth approved less time than the PCM agency requested for each modified ADL because the times requested were longer than ordinarily required for someone with Appellant's physical needs. See Exh. 1. MassHealth stated that the modifications were appropriate and supported under regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1). Id.

After reviewing each of the ADLs, Appellant stated that she did not dispute, and thus accepted, the following ADL modifications: Transfers, modified to 3x6x7; Dressing, modified to 15x1x7; Undressing, modified to 10x1x7; Bowel care, modified to 10x1x7; and Medication prefill, modified to 10x1. See Exh. 1.

Appellant did not, however, agree with MassHealth's modifications to the remaining three ADLs, consisting of: (1) bathing, (2) bladder care, and (3) subcutaneous injections. The evidence regarding disputed ADLs is summarized as follows:

¹ The total weekly time includes day, evening, and nighttime PCA hours.

1. Bathing

Through its PA request, LifePath requested 45 minutes daily (45x1x7) for PCA assistance with showering. See Exh. 4 at 19-20. By modifying the request, MassHealth approved only 30 minutes per day (30x1x7) for this task. See Exh. 1. The MassHealth representative explained that Appellant uses adaptive equipment such as a shower chair, non-slip tub mat, and cane, which offer additional support and can be used to reduce risk of falls. The representative noted that under the “Bathing” ADL category, MassHealth also approved in full separate line-item requests for hair wash at 2x1x7 and a quick wash of 10x1x7. Id. The MassHealth representative clarified that only time for the daily shower was modified.

According to the OT functional status report and nursing evaluation, the LifePath clinicians determined that Appellant requires maximum assistance with bathing activities. In support of the requested bathing time, the PCM agency noted, in relevant part, the following:

[Appellant] requires physical assistance in to and out of tub, is unable to fully, freely, safely, or successfully, bend, reach, stretch, twist, or grasp to retrieve supplies, or wash and dry self, is unable to lift arms to wash hair, and requires quick wash end of day [related to] incontinence, frailty, pain, neuropathy, visually impaired, dizziness, [shortness of breath], fatigue, weakness, unable to push off, poor [fine motor coordination], weak grasp, poor endurance, CP, legs give out, falls, high fall risk, poor balance, poor coordination, impaired bending, pain, requires cane for safe ambulation, [left] foot drag, tremors.

Exh. 4. at 20.

Appellant and her daughter testified that it takes longer than 30 minutes to assist Appellant with all the necessary steps of showering, including drying and routine transfers. Appellant’s entire left side was affected by her stroke which impairs her functional ability to participate in showering activities. Appellant testified that she is not able to wash her arms or torso due to weakness from past CVAs. In addition, she has right side sciatic nerve pain that radiates from her back to leg, chronic lower back pain due to kidney disease, and weakness in her legs. She becomes short of breath at minimal exertion. Her PCA washes her hair and all parts of her body, except for her private parts, which Appellant tries to wash herself. Due to frequent incontinence, Appellant requires thorough cleaning during her shower.

Appellant’s daughter/PCA testified that much of the requested time used to assist Appellant in and out of the shower and drying her off. Appellant described that due to her weakness and low endurance, she frequently will start shaking and easily will lose her breath. Both Appellant and the PCA testified that on average, showering takes at least 45 minutes per day.

2. Bladder Care

Next, Appellant's PCM agency requested 19 minutes, 8x per day (19x8x7) for assistance with bladder care. Id. at 26-27. MassHealth did not modify the daily frequency of requested episodes but found that 19 minutes per episode was longer than ordinarily needed for someone with Appellant's physical needs, and therefore approved only 8 minutes per episode (8x8x7). See Exh. 1.

According to the OT functional assessment and nursing report, the LifePath clinicians determined that Appellant requires maximum assistance with toileting activities. See Exh. 4 at 26-27. In addition to her physical limitations previously detailed under the category of "bathing," the PCM agency also noted that Appellant has frequent episodes of urinary incontinence; that she requires physical assistance getting on and off the toilet; that she is unable to retrieve hygiene supplies, and that she is dependent on the PCA for assistance with clothing management. Id.

At hearing, Appellant and her daughter testified that each episode of bladder care takes longer than 8 minutes. Appellant's daughter/PCA described that although Appellant can walk independently with a cane, it is time consuming to assist Appellant with getting on and off the toilet. Once on the toilet and after her bladder has been emptied, the PCA will use a peribottle to clean in between Appellant's legs and helps with wiping. Appellant uses urinary pads due to incontinence which need to be changed and replaced. Appellant testified that she has trouble moving her arms which is necessary for her to be lifted. Once she is up, the PCA will pull up her pants and help with clothing management. When asked how long each bladder care episode takes on average, Appellant stated that it takes about "15 minutes."

3. Subcutaneous Injection

Lastly, MassHealth testified that Appellant's PCM agency requested 3 minutes, 4 times daily (3x4x7) for assistance with administering medications via subcutaneous injection. Id. at 28-29. Through its 11/2/23 notice, MassHealth modified the request by authorizing only two minutes per episode (2x4x7). See Exh. 1. Documentation in the PA request shows that Appellant is prescribed two injectable medications for diabetes: [REDACTED] taken three times daily, and [REDACTED] taken once daily. See Exh. 4 at 52. In support of the requested time, the PCM agency noted, in relevant part, the following:

[Appellant] is [dependent] for medication management, is unable to fully, freely, safely, or successfully bend, reach, stretch, twist, or grasp to identify, retrieve, or transport appropriate medications, is unable to open bottles or manipulate pills, ***is unable to prepare or administer injectables***, [and] is unable to retrieve, operate, or interpret glucometer...

Id. at 28-29 (emphasis added).

At hearing, Appellant and her daughter explained that each episode of injecting medication takes at least three minutes. Appellant's daughter/PCA explained that her prescribed insulin is administered through an injectable pen, which has a dial that she manually adjusts to set the correct unit to be dispensed. She also rubs an alcohol swab on the injection site before giving the shot. Once the medication is administered and the PCA ejects the syringe/pen, she wipes the area down, and disposes of the needle and medication supplies. She also must change the needle after each use which takes additional time.

Findings of Fact

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

1. Appellant is an adult MassHealth member under the age of 65 and has diagnoses of frailty and weakness due to a history of two CVA's; a myocardial infarction in 2019 with stent placement; diabetes, kidney disease, neuropathy in the bilateral lower extremities, urine incontinence, visual impairment, and hypertension.
2. On 9/29/23, Appellant's PCM agency, LifePath, performed an initial OT and nursing evaluation for PCA services.
3. On 10/17/23, LifePath sent MassHealth a request on behalf of Appellant seeking prior authorization for 68 hours and 30 minutes per week of PCA services from 11/2/2023 through 11/1/2024.
4. On 11/2/2023, MassHealth modified Appellant's PA request by approving 51 hours and 15 minutes per week of PCA services for the requested one-year PA period.
5. In its 11/2/23 notice, MassHealth noted that it modified the following ADLs: (1) transfers, (2) bathing, (3) dressing, (4) undressing, (5) bladder care, (6) bowel care, (7) medication prefill, and (8) subcutaneous injections.
6. Appellant accepted MassHealth's decision to modify five (5) of the eight (8) ADLs, as follows: Transfers, modified to 3x6x7; Dressing, modified to 15x1x7; Undressing, modified to 10x1x7; Bowel care, modified to 10x1x7; and Medication prefill, modified to 10x1.

Bathing

7. Under the ADL category of "Bathing," Appellant's PCM agency requested 45 minutes

daily (45x1x7) for PCA assistance with showering.

8. MassHealth modified the request for daily shower to 30 minutes per day (30x1x7).
9. Appellant uses adaptive equipment such as a shower chair, non-slip tub mat, and cane, which offer additional support and can be used to reduce risk of falls.
10. Appellant requires maximum assistance with bathing activities.
11. Appellant requires physical assistance getting into and out of the tub, is unable to fully, freely, safely, or successfully, bend, reach, stretch, twist, or grasp to retrieve supplies, or wash and dry self, is unable to lift arms to wash hair, and requires quick wash end of day due to incontinence.
12. Appellant is unable to wash her arms or torso due to weakness from past CVAs; she has right side sciatic nerve pain from her back to leg, chronic lower back pain due to kidney disease, and weakness in her legs.

Bladder Care

13. Appellant requested 19 minutes of bladder care assistance, 8x per day (19x8x7).
14. MassHealth modified the request for bladder care to 8 minutes, 8 episodes per day (8x8x7).
15. Appellant requires maximum assistance with toileting activities.
16. Appellant has frequent episodes of urinary incontinence; she requires physical assistance getting on and off the toilet; she is unable to retrieve hygiene supplies; requires assistance from her PCA to use a peri-bottle to clean between her legs; and is dependent for assistance with clothing management.
17. Appellant requires assistance changing and replacing her urinary incontinence pads.
18. Appellant estimated that, on average, she requires “15 minutes” of assistance for each bladder care episode.

Subcutaneous Injection

19. Appellant requested 3 minutes, 4 times daily (3x4x7) for assistance with administering medications via subcutaneous injection.
20. Through its 11/2/23 notice, MassHealth modified the request for subcutaneous

injection by authorizing only two minutes per episode (2x4x7).

21. Appellant is prescribed two injectable medications for diabetes: [REDACTED] taken three times daily, and [REDACTED] taken once daily.
22. Appellant is dependent for medication management, is unable to identify, retrieve, or transport appropriate medications, and is unable to prepare or administer injectables.
23. Appellant's PCA assists in preparing the medication for injection, cleaning the injection site before and after administering the medication, and disposing the medication and supplies appropriately.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:² First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). A service is "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, or 517.007.

See 130 CMR 450.204(A).

² PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.402.

There is no dispute in this appeal that Appellant meets all the pre-requisites to qualify for PCA services. Rather, the issue in dispute is whether MassHealth authorized sufficient time, in accordance with program regulations, for Appellant to receive assistance in performing her ADLs to meet her health care needs. The PCA program allows members to receive medically necessary physical assistance in performing the following ADL categories:

(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 bathing, personal hygiene, or grooming;
- (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.

See 130 CMR 422.410.

MassHealth covers the amount of PCA services a member requires based on the “activity time performed by a PCA in providing assistance with the [task].” See 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” in performing or completing the ADL/IADL. See 130 CMR 422.402. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Bathing

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that the requested time for a daily shower (45x1x7) is appropriate and consistent with the regulatory

standards above. Documentation in the PA request, including an OT functional status report and nursing report, show that Appellant's history of cardiac events, including stroke, impaired her ability to participate in many ADLs, including bathing activities. Due to conditions of frailty, weakness of the extremities, neuropathy, and chronic pain, Appellant is dependent on her PCA for transferring in/out of the shower. Because Appellant has minimal ability to bend, turn, or raise her arms, she requires physical assistance in the shower to wash her body and hair. Appellant's history of incontinence, which is documented in the record, suggests time is needed to ensure her body is washed thoroughly. Once out of the shower, she requires help drying off. Considering these factors together, Appellant demonstrated that the approved 30 minutes does not provide sufficient time for a PCA to perform all stages involved in the bathing process. Accordingly, the appeal is APPROVED with respect to showering at 45x1x7.³

Bladder Care

Under the ADL category of "toileting," Appellant requested 19 minutes of assistance for each bladder care episode, at 8 episodes daily (19x8x7). Although MassHealth approved the frequency of daily bladder care episodes, it modified the request by approving only 8 minutes of assistance per episode. The evidence indicates that Appellant is totally dependent for assistance with all toileting tasks, and that she wears pads due to urinary incontinence. Due to her physical limitations, as described above, Appellant requires assistance getting on and off the toilet, managing clothes, and retrieving hygiene products and urinary incontinence pads. Appellant's PCA testified that she physically assists by using a peri-bottle to ensure hygiene. While the evidence shows that Appellant requires more than 8 minutes of assistance with each bladder care episode, it falls short of warranting approval of the full 19 minutes requested by the PCM agency. At hearing, Appellant stated, through direct testimony, that she requires, on average, 15 minutes of PCA assistance per episode. The documentation in the record supports this estimate and MassHealth should adjust the allotted PCA time accordingly.

Given that the evidence shows Appellant requires more assistance than MassHealth initially authorized but is less than what was requested, this portion of the appeal is both APPROVED-in-part and DENIED-in-part.

Subcutaneous Injection

Appellant successfully demonstrated that she requires the requested 3 minutes of assistance for subcutaneous injection, which is administered 4 times daily (3x4x7). As the PCM agency's evaluation indicates, Appellant is dependent on her PCA for managing and administering medications. Due to her physical limitations, Appellant cannot contribute to related tasks, such as retrieving medication supplies, or preparing the injectable medication. MassHealth modified

³ As previously noted, the requested 45 minutes for a daily shower is considered in *addition* to separate line-items for hair wash (2x1x7) and quick wash (10x1x7) that were requested under the ADL category of "bathing" and which MassHealth approved in-full.

this task by approving only two-minutes per episode (2x4x7). Despite the one-minute difference, Appellant's PCA persuasively testified that each episode involves a multi-step process, including replacing the syringe needle and/or setting the dial on the injection pen to the correct dispensing unit, swabbing the injection site, administering the medication, and correctly disposing of the medication and cleaning up supplies. As such, 3 minutes, 4x daily (3x4x7) to administering medication via subcutaneous injection is appropriate and supported by the record. This portion of the appeal is APPROVED.

Accepted Modifications:

The appeal is DISMISSED with respect to the modifications that were not disputed by Appellant, as follows: Transfers, modified to 3x6x7; Dressing, modified to 15x1x7; Undressing, modified to 10x1x7; Bowel care, modified to 10x1x7; and Medication refill, modified to 10x1.

Order for MassHealth

With respect to Appellant's prior authorization period 11/2/2023 through 11/1/2024, adjust the time authorized for PCA assistance with the following ADLs:

1. Under "Bathing" approve daily shower to 45x1x7, as requested (in *addition* to previously approved time hair wash 2x1x7 and quick wash 10x1x7);
2. Bladder Care: Adjust to 15x8x7.
3. Under "Assistance with Medications," approve "subcutaneous Injection" at 3x4x7, as requested.

All remaining "accepted modifications" (see above) are to remain as originally authorized in MassHealth notice dated 11/2/23.

Ensure all adjustments/increases in authorized PCA time are made retroactive to the beginning of the prior authorization period.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]