

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied in part; Dismissed in part	Appeal Number:	2312159
Decision Date:	2/21/2024	Hearing Date:	12/27/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN *via* telephone



*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:	Denied in part; Dismissed in part	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	2/21/2024	Hearing Date:	12/27/2023
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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 27, 2023, MassHealth modified the appellant's PA request for PCA services. (See 130 CMR 422.410 and Exhibit (Ex.) 1; Ex. 7, pp. 4-6). The appellant filed this appeal in a timely manner on November 27, 2023. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth determination regarding the scope and amount of assistance is valid grounds for appeal. (See 130 CMR 610.032(A)(5)).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in determining that the request for PCA services should be modified.

Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified that

according to submitted documentation, the appellant is between the ages of 21 and 60 years old with primary diagnoses of cerebellar atrophy, developmental delay, hypotonia and ataxia. (Ex. 7, p. 8). The MassHealth representative stated that Boston Center for Independent Living (the PCM agency) submitted a prior authorization request for PCA reevaluation to MassHealth on September 15, 2023 requesting 41 hours and 0 minutes per week for one year. (Ex. 7, pp. 35-42). The MassHealth representative continued that on September 27, 2020 MassHealth modified this request to 37 hours and 15 minutes per week for one year. (Ex. 1; Ex. 7, pp. 4-6). The MassHealth representative said that this prior authorization is effective from November 26, 2023 to November 25, 2024. (Id.). The MassHealth representative stated that MassHealth made three modifications based on MassHealth regulations. (Id.).

The MassHealth representative testified that the first modification concerned mobility, specifically with regard to stairs. The MassHealth representative said that the PCM agency requested two minutes, four episodes per day, seven days per week but, seemed to specify that the appellant needed assistance with stairs outside of her living space. (Ex. 7, pp. 10-12). The appellant's representative confirmed that the appellant does not have stairs in her apartment, though she does have stairs in her apartment building. The MassHealth representative stated that for this activity, MassHealth will only pay for PCA services for inside the actual home living space. The MassHealth representative explained that MassHealth will not generally pay for assistance with mobility outside the home, but will do so when it is part of medical transportation to MassHealth provider. MassHealth stated that when that is the case, it is part of medical transportation, which is another activity. The appellant's representative stated that she understood and accepted this modification.

The MassHealth representative stated that the second modification concerned laundry. The MassHealth representative stated the PCM agency requested 90 minutes per week for laundry. (Ex. 7, p. 29). The PCM agency wrote that the appellant was "[d]ependent for all laundry tasks-residential...PCA assist all laundry tasks d/t frequent washing of laundry d/t spills, toileting accidents, -cognition + safety awareness." (Id.). The MassHealth representative stated that MassHealth modified that time to 75 minutes per week because it was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 7, pp. 4-6). The MassHealth representative explained that MassHealth reached this conclusion for a couple of reasons. The MassHealth representative said that first, the appellant has a washer and dryer in her apartment. The MassHealth representative then said that second, the PCM agency described the appellant as independent with toileting with only a very slight amount of occasional incontinence at nighttime noted. (See Ex. 7, p. 20). The MassHealth representative stated that MassHealth concluded that since the appellant did not have incontinence, she had not shown a greater need for laundering. The MassHealth representative emphasized that the active part of doing the laundry, that is, putting clothes and detergent into machine, turning on, and later transferring to the dryer, are the hands on tasks covered under PCA services, not waiting for the washing and drying to be completed.

The appellant's representative stated that the appellant does have a weak bladder, and so there are times during the day where she will have to change her clothes. The appellant's representative stated that it was not every day, but it did happen. The appellant's representative confirmed that it was more likely to occur at night. She stated that the appellant also was more incontinent when she was sick or fatigued. The appellant's representative stated for the past several years the appellant had been receiving 90 minutes of assistance for laundry and she did not know why it would change. The appellant's representative stated that the appellant is not physically able to participate in this activity.

In answer to the MassHealth representative's questions, the appellant's representative stated that the appellant does not use pull-ups, but will sometimes use an extra menstrual pad to provide leakage protection even when not menstruating. The appellant's representative would not go as far as to say that the appellant was incontinent, just that she had a weak bladder. When pressed, the appellant's representative stated that the appellant required at least five loads of laundry per week. The appellant's representative stated that she could not state for certain how long the active part of this activity would take, but again stated that the appellant did have 90 minutes in the previous year, which the MassHealth representative confirmed.

The MassHealth representative testified that the third modification was to the time requested for medical transportation. The MassHealth representative stated that the PCM agency requested 220 minutes per week. (Ex. 7, pp. 31, 44). The MassHealth representative said that MassHealth modified this to 64 minutes per week because the time requested for transportation was longer than ordinarily required for someone with the appellant's needs. (Ex. 1; Ex. 7, pp. 4-6). The MassHealth representative stated that for each medical provider listed, the PCM agency was supposed to provide the distance in miles, travel time in minutes, transfer time in and out of the home, transfer time in and out of the office, minutes per appointment, number of appointments per year, total minutes per year, and minutes per week. (Ex. 7, p. 44). The MassHealth representative explained that the PCM agency instead just listed the total minutes per appointment, minutes per year, and minutes per week. (Id.).

In her testimony, the appellant's representative was able to provide sufficient detail concerning the missing information and the MassHealth representative was willing to approve all the time as requested for all but two providers. The appellant's representative stated that the appellant's psychologist and speech therapist did not accept MassHealth. The MassHealth representative stated that MassHealth does not cover PCA services for transportation to non-MassHealth providers. The MassHealth representative was willing to approve 70 minutes per week for transportation to the nine MassHealth providers. The appellant's representative did not accept this offer and it remained in dispute.

Findings of Fact

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

1. The appellant is an adult between the ages of 21 and 60 years old with primary diagnoses of cerebellar atrophy, developmental delay, hypotonia and ataxia. (Testimony of the MassHealth representative; Ex. 7, p. 8).
2. Boston Center for Independent Living (the PCM agency) submitted a prior authorization request for PCA reevaluation to MassHealth on September 15, 2023 requesting 41 hours and 0 minutes per week for one year. (Testimony of the MassHealth representative; Ex. 7, pp. 35-42).
3. On September 27, 2020 MassHealth modified this request to 37 hours and 15 minutes per week for one year. (Testimony of the MassHealth Representative; Ex. 1; Ex. 7, pp. 4-6).
4. This prior authorization is effective from November 26, 2023 to November 25, 2024. (Testimony of the MassHealth Representative; Ex. 1; Ex. 7, pp. 4-6).
5. MassHealth made three modifications based on MassHealth regulations. (Testimony of the MassHealth Representative; Ex. 1; Ex. 7, pp. 4-6).
6. The first modification concerned mobility, specifically with regard to stairs. (Testimony of the MassHealth representative; Ex. 1; Ex. 7, pp. 4-6, 10-12).
7. The PCM agency requested two minutes, four episodes per day, seven days per week for mobility assistance with regards to stairs. (Ex. 7, pp. 10-12; Testimony of the MassHealth representative).
8. The PCM agency specified that the appellant needed assistance with stairs outside of her living space. (Ex. 7, pp. 10-12; Testimony of the MassHealth representative).
9. MassHealth modified this to 0 minutes because MassHealth does not cover PCA services outside the home with the exception of medical transportation. (Ex. 1; Ex. 7, pp. 4-6; Testimony of the MassHealth representative).
10. The appellant does not have stairs within her apartment. (Testimony of the appellant's representative).
11. The appellant's representative accepted the modification to mobility for stairs. (Testimony of the appellant's representative).
12. The PCM agency requested 90 minutes per week for assistance with laundry. (Testimony of the MassHealth Representative; Ex. 7, pp. 4-6, 29).
13. The PCM agency wrote that the appellant was “[d]ependent for all laundry tasks-residential...PCA assist all laundry tasks d/t frequent washing of laundry d/t spills,

toileting accidents, -cognition + safety awareness.” (Ex. 7, p. 29).

14. MassHealth modified that time to 75 minutes per week because it longer than ordinarily required for someone with the appellant’s physical needs. (Ex. 1; Ex. 7, pp. 4-6).
15. The appellant has a washer and dryer in her apartment. (Testimony of the MassHealth representative)
16. MassHealth concluded that the appellant had not shown a greater need for laundering because the PCM agency described the appellant as independent with toileting with only a very slight amount of occasional incontinence at nighttime noted. (Testimony of the MassHealth representative; Ex. 7, p. 20).
17. The appellant does have regular incidents of incontinence that are more frequent during nighttime hours and when she is sick or fatigued. (Testimony of the appellant's representative).
18. The appellant generates at least five loads of laundry per week. (Testimony of the appellant's representative).
19. The appellant has received 90 minutes per week for laundry in prior years. (Testimony of the appellant's representative; Testimony of the MassHealth representative).
20. The PCM agency requested 220 minutes per week for medical transportation. (Testimony of the MassHealth Representative; Ex. 7, pp. 31, 44).
21. MassHealth modified this to 64 minutes per week because the time requested for transportation was longer than ordinarily required for someone with the appellant’s needs. (Testimony of the MassHealth Representative; Ex. 1; Ex. 7, pp. 4-6).
22. The PCM agency requested time for two providers who are not MassHealth providers. (Testimony of the MassHealth representative; Testimony of the appellant's representative; Ex. 7, p. 44).
23. The MassHealth does not pay for transportation to non-MassHealth providers. (Testimony of the MassHealth representative).
24. After considering the appellant's representative’s testimony the MassHealth representative agreed to approve 70 minutes for the nine MassHealth providers, which was the time requested for these providers. (Testimony of the appellant's representative; Testimony of the MassHealth representative).

Analysis and Conclusions of Law

BOH will dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). In the hearing, the appellant's representative stated that she did not dispute the modification to mobility assistance for stairs. With respect to that activity of daily living (ADL) the request for the hearing is hereby DISMISSED.

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (Id.). MassHealth covers activity time performed by a PCA in aiding with instrumental activities of daily living (IADLs). (130 CMR 422.411(B)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA. (130 CMR 422.402). IADLs include physically assisting with household management tasks that are incidental to the care of the member, such as laundry, as well as accompanying the member to medical providers. (130 CMR 422.410(B)(1),(3)).

MassHealth does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if, amongst other things, 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)(1)).

The PCM agency requested 90 minutes a week for PCA assistance for laundry, which MassHealth reduced to 75 minutes. The record shows that the appellant is incontinent, particularly when ill or fatigued and during the nighttime. The appellant's representative indicated that the appellant's incontinence is fairly regular, though the appellant is not incontinent every day. The appellant generates at least five loads of laundry per week. Because the appellant's PCA does laundry so frequently, the loads would be small. Taking the load to the machine, putting the clothes into the machine with detergent, and turning the machine on would take no more than a few minutes. Later moving the clothes to the dryer and turning it on would take only a minute. Unloading the dryer and putting the few items away would take only about 5 minutes. In total, the hands on tasks for each load of laundry should take no more than 10 minutes, and if the PCA is doing 5 loads a week, that calculates to 50 minutes. MassHealth approved 75 minutes a week which is more than sufficient for the PCA to complete the appellant's laundry tasks.

As for the time requested for medical transportation, the MassHealth representative decided to overturn the MassHealth determination and approve the 70 minutes per week requested for transportation for the nine MassHealth providers. There was, however, a further 150 minutes

per week requested for two other providers who are not MassHealth providers. MassHealth, does not cover PCA services provided to a member without the use of Electronic Visit Verification (EVV), which is the method or system designated or approved by the Executive Office of Health and Human Services (EOHHS) to electronically verify service delivery in the form and format as required by the MassHealth agency. (130 CMR 422.402; 422.412(H)). The regulations therefore do not permit time to be allotted for transportation to these non-MassHealth providers.

For the above stated reasons, the appeal is DISMISSED with regard to the time requested for PCA assistance with mobility; APPROVED with regard to the time requested for PCA assistance with medical transportation to the nine MassHealth providers; and DENIED with regard to the time requested for PCA assistance with medical transportation to the two other providers who are not MassHealth providers, and for the additional time requested for PCA assistance with laundry.

Order for MassHealth

Approve 70 minutes per week for medical transportation.

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 report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Scott Bernard
Hearing Officer
Board of Hearings

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

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