

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Dismissed in part; Denied in part | Appeal Number: | 2313018 |
| Decision Date: | 3/12/2024 | Hearing Date: | 01/10/2024 |
| Hearing Officer: | Scott Bernard | | |

Appearance for Appellant:

 via telephone
via telephone


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

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|---------------------------|--------------------------------------|--------------------------|---|
| Appeal Decision: | Dismissed in part; Denied in part | Issue: | Prior Authorization (PA) Personal Care Attendant (PCA) Program |
| Decision Date: | 3/12/2024 | Hearing Date: | 01/10/2024 |
| 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 November 22, 2023, MassHealth modified the appellant's PA request for PCA services. (See 130 CMR 422.410(B)(1),(C)(1); 422.412(F); 450.204(A); Exhibit (Ex.) 1; Ex. 5, pp. 3-5). The appellant filed this appeal in a timely manner on December 12, 2023. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request for PCA services is valid grounds for appeal. (See 130 CMR 610.032).

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(B)(1),(C)(1); 422.412(F); 450.204(A), in modifying the request for PCA services.

Summary of Evidence

MassHealth was represented telephonically by a registered nurse and clinical appeals reviewer working for MassHealth's agent, Optum. The appellant appeared telephonically and gave his approval for his daughter-in-law, the PCA, to represent him in the hearing.

The MassHealth representative testified to the following. According to documentation, the appellant is over 65 years old with primary diagnoses of Parkinson's disease, type 2 diabetes, and hypertension. (Testimony; Ex. 5, pp. 10-11). The appellant receives Visiting Nurses Association (VNA) services every week. (Testimony; Ex. 5, p. 8). The appellant resides with his wife, who has 10 hours per week of consumer directed care (CDC) services. (Testimony; Ex. 5, p. 8). On October 19, 2023, Tempus Unlimited (the PCM agency) submitted an initial prior authorization request for PCA services, on the appellant's behalf, to MassHealth. (Testimony). The PCM agency requested 24 hours, 30 minutes per week of PCA services for one year. (Ex. 1; Ex. 5, pp. 3-5; Testimony). In a notice dated November 21, 2023, MassHealth modified this request to 11 hours and 45 minutes per week for dates of service from November 21, 2023 to November 20, 2024. (Testimony; Ex. 1; Ex. 6, pp. 3-5).

Specifically, MassHealth modified the time requested for bathing, medication assistance, meal preparation, laundry, housekeeping, and shopping based on MassHealth regulations. (Testimony; Ex. 1; Ex. 5, pp. 3-6).

1. Bathing

The PCM agency requested 40 minutes, one time per day, one day per week and 20 minutes, six times per day, six days per week for bathing. (Testimony; Ex. 6, p. 18). The PCM agency commented that the surrogate "[r]eports getting consumer in and out of shower and bathed is very taxing and requires max A[ssist] so it is done once a week. A in and out of shower/on and off shower chair. Consumer can wash face with set up. A to wash, rinse, dry rest of body due to Parkinson's. Reports sponge bath done 6 days a week. A to set up/clean up. Consumer can wash face. A to wash, rinse, dry head to toe." (Testimony; Ex. 6, p. 19). MassHealth modified this to 40 minutes one time per day, one day per week and 20 minutes, one time per day, six days per week because the time requested was longer than ordinarily required for someone with the appellant's physical needs citing 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1). (Testimony; Ex. 1; Ex. 6, p. 4).

The PCM agency's submission clearly indicated that the appellant only receives one daily sponge bath six days per week, but it requested six daily sponge baths. (Testimony). The MassHealth modification was only to the daily frequency of sponge baths and was done to correct what appeared to be the PCM agency's error. (Testimony; Ex. 1; Ex. 6, p. 4). The appellant's representative confirmed that the appellant only receives one sponge bath per day, six days per week. (Testimony). The appellant's representative agreed to the modification. (Testimony). The appellant's representative did state that the times the PCM agency requested may not be

sufficient. (Testimony). She also criticized the dilatory manner the PCM agency performed the evaluation, stating that its process took three months before it submitted anything to MassHealth. (Testimony). The MassHealth representative stated that MassHealth could not approve more time than the PCM agency requested and that the appellant should contact the PCM agency about requesting more time if there were any activities for which she felt the PCM agency did not request enough time. (Testimony).

2. Medication Assistance

The PCM agency requested three minutes, two times per day, seven days per week for medication assistance. (Testimony; Ex. 5, p. 25). MassHealth modified this to two minutes, two times per day, seven days per week. (Testimony; Ex. 1; Ex. 5, pp. 3-5). MassHealth modified the time for medication assistance for two reasons. (Testimony). First, the time requested was longer than ordinarily required for assistance for someone with the appellant's physical needs. (Testimony). Second, MassHealth modified the time for medication assistance because the VNA nurse assists with this task and is legally obligated to provide those services at no cost to the appellant. (Testimony; Ex. 1; Ex. 5, p. 3). MassHealth cited 130 CMR 450.204(A)(2), 130 CMR 517.008(B)(2)). (Ex. 1; Ex. 5, p. 4). Every week, the VNA nurse sets up the appellant's pills in little cups. (Testimony; Ex. 5, pp. 8, 25). The PCA gives those cups to the appellant with a cup of water twice daily. (Testimony; Ex. 5, p. 8). It is MassHealth's position that giving the appellant a little cup with his pills and some water should take no longer than two minutes per occurrence. (Testimony).

The appellant's representative did not know whether it took three or two minutes to administer the appellant's medications. (Testimony). She confirmed that the appellant does not use a pill planner as such, the medications are parceled out into cups which he is more comfortable using. (Testimony). Once a week, the visiting nurse allots the medication into the cups, which are each marked with the day of the week/time of the day each should be taken. (Testimony).

3. Meal preparation, Laundry, Housekeeping, and Shopping

The PCM agency requested 30 minutes per day, seven days per week for meal preparation, which MassHealth modified to 15 minutes per day, seven days per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 30). The PCM agency requested 45 minutes per week for laundry, which MassHealth modified to 30 minutes per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 30). The PCM agency requested 45 minutes per week for housekeeping, which MassHealth modified to 30 minutes per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 31). Finally, the PCM agency requested 45 minutes per week for shopping, which MassHealth modified to 30 minutes per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 31). MassHealth modified these IADLs for the same reason. (Testimony). The appellant lives with his spouse, who receives 10 hours per week of CDC services for the same IADLs. (Testimony). MassHealth is required to factor the spouse's services into the calculation of time for the appellant's IADLs under 130 CMR 422.410. (Testimony). This is to ensure that one household does not receive duplicative IADL services. (Testimony). Finally, the time requested also appeared to be longer than ordinarily required for someone with the appellant's needs. (Testimony).

The appellant's representative stated that she disagreed with the policy of sharing, as when she was assisting the appellant, she could not assist his spouse and vice versa. (Testimony). The appellant's representative also stated that she needed three hours to do the appellant's laundry and that 45 minutes was not enough time. (Testimony). The MassHealth representative responded that the time allotted for each IADL was determined based on the active time PCA spent performing the activities and not for inactive components. (Testimony). She provided an example for laundry, which was that MassHealth would only pay for the time the PCA sorted the laundry, put it in the washer, moved the laundry from the washer to the dryer, took it from the dryer, folded it, and put it away. (Testimony). MassHealth did not pay for any of the time while the laundry was in the washing machine or in the dryer. (Testimony).

Findings of Fact

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

1. The appellant is over 65 years old with primary diagnoses of Parkinson's disease, type 2 diabetes, and hypertension. (Testimony; Ex. 5, pp. 10-11).
2. The appellant receives VNA services every week. (Testimony; Ex. 5, p. 8).
3. The appellant resides with his wife, who has 10 hours per week of CDC services. (Testimony; Ex. 5, p. 8).
4. On October 19, 2023, the PCM agency submitted an initial prior authorization request for PCA services on the appellant's behalf to MassHealth. (Testimony).
5. The PCM agency requested 24 hours, 30 minutes per week of PCA services for one year. (Ex. 1; Ex. 5, pp. 3-5; Testimony).
6. In a notice dated November 21, 2023 MassHealth modified this request to 11 hours and 45 minutes per week for dates of service from November 21, 2023 to November 20, 2024. (Testimony; Ex. 1; Ex. 5, pp. 3-5).
7. Specifically, MassHealth modified the time requested for bathing, medication assistance, meal preparation, laundry, housekeeping, and shopping based on MassHealth regulations. (Ex. 1; Ex. 5, pp. 3-5; Testimony).
8. Bathing:
 - a. The PCM agency requested 40 minutes, one time per day, one day per week and 20 minutes, six times per day, six days per week for bathing. (Testimony; Ex. 6, p. 18).
 - b. MassHealth modified this to 40 minutes one time per day, one day per week and 20 minutes, one time per day, six days per week. (Testimony; Ex. 1; Ex. 6, pp. 3-5).

- c. The PCM agency indicated that the appellant requires 40 minutes to shower, but only showers one time per week because it is physically taxing. (Testimony; Ex. 5, p. 19).
- d. For the remaining six days, the PCM agency indicated that the appellant has one 20 minute sponge bath per day. (Testimony; Ex. 5, p. 19).
- e. MassHealth determined that the PCM agency requested six daily sponge baths in error because the PCM agency submission only indicated the appellant received one sponge bath and MassHealth treated the request as an error. (Testimony).
- f. The appellant's representative confirmed that the appellant only receives one sponge bath per day and did not contest this modification. (Testimony).

9. Medication Assistance

- a. The PCM agency requested three minutes, two times per day, seven days per week for medication assistance. (Testimony; Ex. 5, p. 25).
- b. MassHealth modified this to two minutes, two times per day, seven days per week. (Testimony; Ex. 1; Ex. 5, pp. 3-5).
- c. MassHealth modified the time for medication assistance because the time requested was longer than ordinarily required for assistance someone with the appellant's physical needs and medication assistance is partially supplied by the VNA nurse and the VNA is legally obligated to provide those services at no cost to the appellant. (Testimony; Ex. 1; Ex. 5, p. 3).
- d. Every week, the VNA nurse sets up the appellant's pills in little cups. (Testimony; Ex. 5, pp. 8, 25).
- e. The PCA gives those cups to the appellant with a cup of water twice daily. (Testimony; Ex. 5, p. 8).
- f. It was MassHealth's position that giving the appellant a little cup with his pills and some water should take no longer than two minutes per occurrence. (Testimony).

10. Meal preparation, Laundry, Housekeeping, and Shopping

- a. The PCM agency requested 30 minutes per day, seven days per week for meal preparation, which MassHealth modified to 15 minutes per day, seven days per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 30).
- b. The PCM agency requested 45 minutes per week for laundry, which MassHealth modified to 30 minutes per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 30).

- c. The PCM agency requested 45 minutes per week for housekeeping, which MassHealth modified to 30 minutes per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 31).
- d. Finally, the PCM agency requested 45 minutes per week for shopping, which MassHealth modified to 30 minutes per week. (Testimony; Ex. 1; Ex. 5, pp. 3-6, 31).
- e. MassHealth modified each of these IADLs because the appellant lives with his spouse, who receives 10 hours per week of CDC services for the same IADLs. (Testimony).

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)). The PCM agency requested 20 minutes, six times per day, six days per week for sponge baths. In its submission, the PCM agency did not show that the appellant receives any more than one sponge bath per day. MassHealth treated the requested daily frequency as an error on the part of the PCM agency and modified the daily frequency to only one occurrence per day. The appellant's representative agreed that the appellant only receives one sponge bath per day, six days per week and accepted the modification once the MassHealth representative explained the reason for the modification. For this reason, with regards to bathing, the appeal is DISMISSED.

As a prerequisite to payment for PCA services, the PCM agency must request prior authorization from MassHealth. (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 activities of daily living (ADLs) and instrumental activities of daily living (IADLs). (130 CMR 422.411(A)). ADLs are those specific activities performed by a PCA to physically assist a member with mobility, taking medications, bathing or grooming, dressing, passive range of motion exercises, eating, and toileting. (130 CMR 422.402; 422.410(A)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services. (130 CMR 422.402; 422.410(B)(1)).

In determining the number of hours of physical assistance that a member requires for IADLs, the PCM agency must assume, among other things, that when a member is living with family members, the family members will provide assistance with most IADLs. (130 CMR 422.410(C)(1)). MassHealth does not cover services provided by family members. (130 CMR 422.412(F)). For the purposes of the PCA program, MassHealth defines the term "Family Member" as "the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative." (130 CMR 422.402). MassHealth does not pay for any health care and related services that are available at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services. (130 CMR 517.008(B)(2)).

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 record does not show by a preponderance of the evidence that the appellant requires more than two minutes per occurrence for assistance with his medications. A VNA nurse places the appellant's medications with instructions on when to take them once per week. The PCA assists the appellant only by bringing the appellant the correct cup, and giving him water. There is no evidence that PCA does any more to assist with completion of this ADL. MassHealth has determined that two minutes per occurrence is sufficient time for this task and the MassHealth representative, a registered nurse, supported this opinion. For that reason, with regards to PCA assistance with medication assistance, the appeal is DENIED.

For different somewhat different reasons, a preponderance of the evidence does not show that the appellant requires the amount of time the PCM agency requested for assistance with meal preparation, laundry, housekeeping, and shopping. The record shows that the appellant resides with his spouse. The MassHealth representative stated that the appellant's spouse receives 10 hours of assistance per week for assistance with the same IADLs, albeit through CDC and not through PCA. It is true that MassHealth did not state how these 10 hours of CDC assistance was allotted amongst the four IADLs. No evidence was presented at the hearing however, showing that the appellant required a greater allotment of time for PCA assistance with meal preparation, laundry, housekeeping, or shopping than the time MassHealth approved. There was also no evidence that assistance with these IADLs was performed separately or that assistance with the appellant's IADLs could not be performed within the time allotted between these spouses for these IADLs. For the above stated reasons, with regard to the modifications to meal preparation, laundry, housekeeping, and shopping, the appeal is also DENIED.

Order for MassHealth

None.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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