

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part	Appeal Number:	2313079
Decision Date:	02/09/2024	Hearing Date:	01/11/2024
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; Dismissed in part	Issue:	Prior Authorization; PCA; Dressing
Decision Date:	02/09/2024	Hearing Date:	01/11/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
Hearing Location:	Telephonic	Aid Pending:	Yes

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 30, 2023, MassHealth modified the appellant's request for personal care attendant services, allowing 79 hours and 30 minutes per week, fewer than were requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on December 13, 2023, and the appellant's personal care attendant hours are protected at 83 hours per week. (Exhibit 2; 130 CMR 610.015(B); 610.036.) 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 November 13, 2023, the appellant's personal care management ("PCM") agency, Boston Center for Independent Living ("BCIL"), submitted an initial prior authorization request for personal care attendant ("PCA") services. This request sought 94 hours per week of PCA services (5,643 minutes per week, including 840 nighttime minutes).¹ The prior authorization period for this request runs from December 18, 2023, through December 17, 2024. The appellant is an adult with a primary diagnosis of progressive multiple sclerosis, and additional diagnoses including anxiety, depression, neurogenic bladder and bowel, chronic constipation, neuropathy, long-term wound on the right buttock, amongst other conditions. MassHealth made eight modifications and allowed 79 hours and 30 minutes of PCA services per week (4,759 total minutes per week).

MassHealth and the appellant resolved their disagreements regarding the times for the following tasks:

- For transferring, the appellant requested 15 minutes six times per day. MassHealth modified this request to 10 minutes per transfer, but at the hearing the requested time per transfer was restored in full (210 minutes per week restored).
- For "Other" grooming, the appellant accepted MassHealth's reduction from two minutes and five minutes per day down to five minutes per day (14 minutes per week net reduction).
- The appellant also accepted MassHealth's reduction in time to assist with eating from 20 minutes three times per day to 15 minutes per instance of eating (105 minutes per week net reduction). In part, the appellant accepted this because an additional five minutes twice per day was allowed for drinking, which was an increase in time from last year's authorization.
- The appellant accepted MassHealth's reduction for ostomy-site care from five minutes three times per day to five minutes per day (70 minutes per week net reduction).
- MassHealth modified the requested "wound care" from 10 minutes twice per day to nothing on the grounds that a PCA could not provide complex wound care. During the hearing, MassHealth agreed to restore five minutes per day to apply a barrier to the

¹ The prior authorization request erroneously requested no time for grocery shopping. The total calculated time as requested was only 92 hours and 45 minutes (5,553 minutes, including 840 nighttime minutes) per week. MassHealth's notice states that 94 hours were requested, and MassHealth's representative agreed to honor the intended request for 90 minutes of grocery shopping. This decision proceeds as if the 90 minutes for grocery shopping were uniformly requested.

appellant's wound, as the wound is mostly healed. The appellant accepted this net 105-minute reduction to the requested services.

- Finally, MassHealth modified the time requested for equipment maintenance. The appellant had requested 100 minutes per week. MassHealth initially allowed 20 minutes, but the parties agreed to 45 minutes per week (55 minute per week net reduction).

The remaining disagreement between the parties is regarding the time requested for dressing and undressing. The appellant sought 25 minutes and 12 minutes per day for dressing. She also requested 12 minutes plus six minutes per day for undressing. The prior authorization request identifies the larger times as reflecting the time to change clothing at the start and end of the day, and the lesser times relating to clothing changes that are needed due to soiling. Further, the appellant is described as requiring "total dependence" level of assistance with these tasks. (Exhibit 6, pp. 18.) MassHealth modified the total time for dressing from 37 minutes to 20 minutes (119 minutes per week) and reduced the total time for undressing from 18 minutes down to 10 minutes (56 minutes per week). In part, MassHealth's representative testified that this was done because time for changing due to soiling should be requested as part of the time required for toileting. She pointed out that the appellant's toileting time was approved without any modifications. The time for toileting included time to change absorbent products and to "assist with clothing management."

At the hearing, the appellant alternately described the time requested as 37 minutes being needed to get dressed in the morning and 18 minutes as being needed to get changed into pajamas at night. She testified that she does have braces that are placed on her feet to help secure her lower extremities, and that putting pants on is very challenging. She also testified that her movement has gotten worse over the last year with worsening spasms in her extremities and reduced ability to participate. She testified that she had timed how long it took to get dressed in preparation for the appeal, and that it took 25 minutes to get dressed in a dress, and not including time to put on an adult diaper. She testified that if she wears pants, it will take a minimum of 35 minutes to get dressed, and that does not count any time to change if her clothing becomes soiled. The appellant felt that the time requested in toileting regarding "clothing management" only referred to putting clean clothing back on the appellant's body, not changing soiled clothing.

Findings of Fact

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

- 1) The appellant is an adult with a primary diagnosis of progressive multiple sclerosis, and additional diagnoses including anxiety, depression, neurogenic bladder and bowel, chronic constipation, neuropathy, long-term wound on the right buttock, amongst other conditions. (Exhibit 6, p. 7.)

- 2) On or around November 13, 2023, the appellant's PCM agency, BCIL, submitted an initial prior authorization request for PCA services. This request is for 94 hours per week of PCA services from December 18, 2023, through December 17, 2024. (See Exhibit 6.)
- 3) MassHealth restored all of the requested time for transferring, and the parties resolved the modifications to grooming, eating, ostomy care, wound care, and equipment maintenance. The agreements reached at the hearing result in a net reduction of 349 minutes per week from the original requested 5,643 minutes per week. (Testimony by MassHealth's representative and the appellant's representatives.)
- 4) The appellant requested a total 37 minutes per day for dressing and 18 minutes per day for undressing. Some of the requested time was for changing soiled clothing. The appellant's extremities have become more spastic, and she has less control over them than in the past. (Exhibit 6, p. 18; testimony by the appellant's representatives.)
- 5) MassHealth allowed 20 minutes for dressing and 10 minutes for undressing per day (a total reduction of 175 minutes per week). In part, MassHealth's rationale was that time for absorbent materials and soiled clothing changes should be requested under the toileting category of assistance. All time requested in toileting was approved. (Exhibit 6, pp. 4, 20-21; testimony by MassHealth's representative.)
- 6) The appellant's request for toileting included time for to change absorbent products and to "assist with clothing management." It did not include time for changing soiled clothing. (Exhibit 6, pp. 20-21.)

Analysis and Conclusions of Law

MassHealth generally covers personal care attendant ("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).)

As a preliminary matter, the parties reached negotiated agreements with regards to transferring, grooming, eating, ostomy care, wound care, and equipment maintenance, resulting in a net reduction of 349 minutes per week from the requested 5,643 minutes per week of total PCA services. This appeal is DISMISSED in regard to these modifications. (130 CMR 610.035; 610.051.)

The remaining issue solely involves the definition of “dressing.” MassHealth argues that the definition of dressing solely encompasses the action of dressing a person in the morning, and that additional clothing changes resulting from incontinence should be requested as toileting assistance. MassHealth’s representative did not argue that the time was not needed, but rather felt that the time should have been categorized differently. This argument is not supported by the

regulations, nor is it clear from the Time for Task Guidelines often relied upon by MassHealth.² These Guidelines describe “Dressing” as “[p]utting on, fastening, and taking off all items of clothing, including set-up, donning/removing prosthesis and orthotics.” (Guidelines, p. 7.) The reference to clothing in the description of “Toileting” only references assistance with “hygiene and **adjusts** clothes; assist with bowel and bladder and routines; cleans/changes toileting equipment (foley bag, catheter, etc.).” (Guidelines, p. 10 (emphasis added).)

Further, these Guidelines anticipate an average of 30 minutes of assistance for dressing a person characterized as totally dependent, and 20 minutes of assistance for undressing. Five additional minutes per day is a reasonable amount of time to cover occasional clothing changes due to incontinence. There is no reason to deny those five minutes where they would have been allowed had they been requested under toileting. Where a task could reasonably be accounted for under different categories, MassHealth should not deny time because it feels the task is better characterized as another category of assistance.

Therefore, this aspect of the appeal is APPROVED. The remaining 175 minutes per week requested for dressing shall be restored. All time restored shall be effective as of the beginning of the prior authorization period, December 18, 2023. The only reduction in time is the agreed reduction of 349 minutes, resulting in 5,294 total minutes allowed, or 88 hours and 15 minutes per week inclusive of nighttime hours.

Order for MassHealth

Allow 88 hours and 15 minutes per week starting December 18, 2023. This time includes 14 nighttime hours.

² This document is not available on MassHealth’s website, but it has been made available pursuant to a public records request. (Available at <https://www.masslegalservices.org/system/files/library/Time-for-Tasks%20Guidelines%20for%20the%20MassHealth%20PCA%20Program.pdf> (last visited February 9, 2024).)

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
[REDACTED]