

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed-in-part	Appeal Number:	2313401
Decision Date:	3/18/2024	Hearing Date:	01/18/2024
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:

Pro se



Appearance for MassHealth:

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

Interpreter: Spanish



*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:	Personal Care Attendant Services
Decision Date:	3/18/2024	Hearing Date:	01/18/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	<i>Pro se</i> ; 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 11/28/23,¹ MassHealth modified Appellant's prior authorization request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant filed a timely appeal on 12/19/23. See 130 CMR 610.015(B); Exhibit 2. Modification of a prior authorization request for services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

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

Summary of Evidence

¹ See footnote #2, p. 2 regarding incorporation of 1/3/24 MassHealth notice which corrected errors reported in the 11/28/23 notice. Both notices pertain to the same modifications are incorporated into this Decision.

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by himself and his PCA, both of whom testified through a Spanish interpreter. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is an adult male under the age of [REDACTED] with diagnoses of Multiple Sclerosis (MS), Parkinson's, insulin dependent diabetes mellitus (Type 1 Diabetes), right-sided paralysis, right-sided above-the-knee amputation, incontinence, and depression. Id.

On 10/30/2023, Appellant's personal care management (PCM) agency, [REDACTED] [REDACTED] conducted an in-person reevaluation of Appellant at his home to assess his continued need for PCA services. Based on the reevaluation findings, [REDACTED] sent MassHealth a PA request on behalf of Appellant seeking authorization for 53 hours of PCA services per-week (including both day/evening/night hours) for dates of service beginning 11/29/2023 and ending 11/28/2024. See id. at 4.

Through notices dated 11/29/23 and 1/3/24, MassHealth modified Appellant's PA request by approving 47 hours and 30 minutes per-week of PCA services.² See id. at 2. Specifically, MassHealth modified the PA request by adjusting downwards the time authorized for the following ADLs: (1) oral care; (2) shaving; (3) "other" grooming, i.e., lotion application; (4) dressing; (5) undressing; (6), bladder care; and (7) medication assistance. Id. at 4. The basis for MassHealth's determination, as cited in its 11/29/23 and 1/3/24 notices, was that the times requested for the modified ADLs were "longer than ordinarily required for someone with [Appellant's] physical needs," pursuant to 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1). Id.

At hearing, Appellant indicated that he did not dispute, and thus accepted, the modifications to (1) oral care (under grooming) at 2x2x7; (2) "other" grooming, i.e., lotion application at 4x1x7; and (3) medication assistance at 1x6x7.³ See id. The modifications that remained in dispute, were addressed as follows:

Shaving

² The 11/29/23 notice, which Appellant timely appealed, erroneously reported that MassHealth modified Appellant's PA request to "37 hours and 30 minutes" per-week. See Exh. 1. On 1/3/24, MassHealth issued a corrected notice to clarify that the authorized hours actually totaled 47 hours and 30 minutes (as opposed to 37.5 hours cited in the 11/29/23 notice). See Exh. 4, p. 2. Both the 11/29/23 and 1/3/24 notices identified the same ADLs and modifications as the basis for the determination. Id. This Decision addresses both notices as they pertain to the authorized time/frequency for the modifications in dispute.

³ In its PA request, the PCM agency sought oral care at 2x3x7, lotion application at 10x1x7, and medication assistance at 3x6x7. See Exh. 4.

Under the ADL category of “grooming,” Appellant’s PCM agency requested 10 minutes 1x per-day, 7 days per-week (10x1x7) for the PCA to provide “maximum” physical assistance with shaving. See Exh. 4, p. 15. MassHealth modified the request to 4 minutes per-day, 7 days per-week (4x1x7). See Exh. 1.

In support of the requested level of care, the PCM agency noted that Appellant is unable to perform grooming tasks independently due to increased weakness due to progression from MS and Parkinson’s; chronic pain due to lumbar and thoracic issues; poor fine motor skills (due to his MS); and inability to bend, reach, or grasp items or objects. Id.

At hearing, Appellant testified that it takes the PCA longer than 10 minutes to shave, due in large part to his worsening Parkinson’s, which his neurologist can attest to. Because his trembling has worsened, he cannot shave himself. The PCA performs all shaving tasks. If he did try to shave himself, he would cut his face, chin, or neck. The PCA also testified that she not only shaves Appellant, but she trims his hair weekly and she has done this for years. Appellant does not have to go to a barber because she has her own supplies to shave him and cut his hair. Because she takes time to shave a certain way, like a design, which, can take 25 minutes per-day.

In response, MassHealth noted that Appellant’s PCM agency did not specifically request PCA assistance for hair cutting, and that it would not be considered under shaving.

Dressing/Undressing

Next, Appellant’s PCM agency requested 20 minutes per-day, 7 days per-week for assistance with dressing (20x1x7); and requested 15 minutes per-day for undressing (15x1x7). See Exh. 4, p. 17. MassHealth modified the requests by adjusting downward the authorized time to 15 minutes per-day for dressing (15x1x7) and 10 minutes for undressing (10x1x7).

In support of its request, the PCM agency noted that Appellant requires maximum physical assistance for both upper body dressing/undressing and lower extremity dressing/undressing, including donning and removing footwear. Id. The PCM agency cited Appellant’s numerous diagnoses as the basis for his inability to perform this ADL task independently, as well as his chronic pain, inability to stand due to his above-the-knee amputation, poor fine motor skills, and inability to bend, stretch, reach, grasp, - all of which make the process of dressing and undressing difficult. Id.

At hearing, Appellant testified that it takes the PCA much longer than 15 and 10 minutes, respectively to get dressed and undressed. The PCA has to deal with his increasing trembling, which makes the dressing/undressing process more complicated. Appellant’s PCA described that after he is bathed, which is on the second floor, she assists him down the stairs while he uses crutches. She then gets him in a chair and assists him, so he is sitting upright. She will then retrieve clothing and dress him. Dressing/undressing is more complicated and takes longer than ordinary because he cannot easily move his body and he lacks full bodily sensation. There are

times where he may regain feeling but this is rare. In addition, Appellant has episodes of incontinence at least once a day, if not more, which require additional episodes of having to change his clothes.

Bladder care

Finally, Appellant's PCM agency requested 5 minutes, 8x per-day, 7 days per-week (5x8x7) for assistance with bladder care. MassHealth modified the requested frequency of daily episodes to 6x per-day, thus approving 5x6x7.⁴ MassHealth made its determination because the requested frequency exceeded what would typically be required by someone with Appellant's physical condition.

In support of the request, ██████ noted that Appellant's multiple diagnoses affect his ability to toilet independently, and that he requires maximum assistance with bowel and bladder care, including physical assistance with toilet hygiene and clothing management. See Exh. 4, p. 19. Specifically, the PCM agency noted that Appellant cannot bend, reach, grasp, or twist; that he is incontinent of urine at least once per-day; and that he cannot transfer to the toilet without assistance. Id.

Appellant and his PCA testified that the requested frequency of bladder care episodes is necessary and likely underestimates how often he is assisted with this ADL. Appellant's PCA explained that Appellant's diabetes can get out of control and causes him to drink a lot of water, resulting in more fluid output. He also takes a specific medication for Parkinson's which causes him to urinate frequently. Because of the frequency, as well as his difficulties being transferred to the bathroom, the PCA stated that she keeps urinals close to his bed so that she can help him with vacating and clean-up tasks.

Findings of Fact

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

1. Appellant is an adult male under the age of ██████ with diagnoses of MS, Parkinson's, Type 1 Diabetes, right-sided paralysis, right-sided above-the-knee amputation, incontinence, and depression.
2. Pursuant to a 10/30/23 reevaluation, ██████ sent MassHealth a PA request on behalf of Appellant, seeking authorization for 53 hours of PCA services per-week for dates of service beginning 11/29/2023 and ending 11/28/2024.

⁴ In addition, the PCM agency requested two nighttime episodes of bladder care (midnight to 6am), which were approved as requested.

3. On 11/29/23, and 1/3/24, MassHealth modified Appellant's PA request by approving 47 hours and 30 minutes of weekly PCA services, consisting of modifications to the following ADLs: (1) oral care; (2) shaving; (3) "other" grooming, i.e., lotion application; (4) dressing; (5) undressing; (6), bladder care; and (7) medication assistance. Id. at 4.
4. Appellant did not dispute, and thus accepted, the modifications to (1) oral care at 2x2x7; (2) "other" grooming, i.e., lotion application at 4x1x7; and (3) medication assistance at 1x6x7.

Shaving

5. Appellant's PCM agency requested 10x1x7 for the PCA to provide "maximum" physical assistance with shaving.
6. MassHealth modified the request for shaving to 4x1x7.
7. Appellant is unable to perform grooming tasks independently due to his diagnoses; increased weakness due to progression from MS and Parkinson's; chronic pain due to lumbar and thoracic issues; poor fine motor skills due to his MS; and his inability to bend, reach, or grasp items or objects.
8. Appellant's trembling has worsened as his Parkinson's progresses.
9. Appellant's PCA uses her own supplies to shave Appellant and trim his hair, which she does, in addition to shaving, on a weekly basis.

Dressing/Undressing

10. Appellant's PCM agency requested 20x1x7 for dressing; and requested 15x1x7 for undressing.
11. MassHealth modified the requests by adjusting downward the authorized time to 15x1x7 for dressing and 10x1x7 for undressing.
12. Appellant requires maximum physical assistance for both upper body dressing/undressing and lower extremity dressing/undressing, including donning and removing footwear.
13. Appellant is unable to participate in any dressing/undressing tasks given his multiple diagnoses, chronic pain, poor fine motor skills, and inability to bend, stretch, reach, and grasp.

14. Appellant's increased trembling due to worsening Parkinson's makes it harder and more complicated for the PCA to dress and undress Appellant.
15. Additional clothing changes are performed based on his incontinence.

Bladder Care

16. Appellant's PCM agency requested 5x8x7 for assistance with bladder care.
17. MassHealth modified the requested frequency of daily bladder care episodes to 6x per-day, thus approving 5x6x7.
18. Appellant's diagnoses affect his ability to toilet independently and he requires maximum assistance with bowel and bladder care, including maximum physical assistance with toilet hygiene and clothing management.
19. Appellant is incontinent of urine at least once per-day; and he cannot transfer to the toilet without assistance.
20. Appellant urinates frequently due to increased water consumption (related to diabetes) and side effects from a prescribed Parkinson's medication.

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:⁵ 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

⁵ 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 422.002.

(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).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. The sole issue on appeal is whether MassHealth allotted sufficient time for Appellant to receive assistance with the ADLs of bathing, dressing, undressing, and bladder care.

MassHealth cover's PCA assistance for the following ADLs:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL.

- (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.***

See 130 CMR 422.410 (emphasis added).

MassHealth will pay for the "activity time performed by a PCA in providing assistance with the [tasks]." See 130 CMR 422.411. MassHealth does not, however, pay for "assistance provided in the form of cueing, prompting, supervision, guiding, or coaching." See 130 CMR 422.412(C).

Shaving:

Based on the evidence presented at hearing, Appellant demonstrated that he requires more than 4 minutes per-day of assistance with shaving, as was approved by MassHealth. Through his PA request, Appellant sought 10 minutes per-day (10x1x7) for shaving. In support thereof, [REDACTED] documented that Appellant requires maximum assistance with shaving due to his diagnoses and comorbidities, the symptoms of which, impair his fine motor skills and ability to bend, reach, or grasp objects. See Exh. 4, p. 15. Appellant and his PCA corroborated these findings by credibly testifying that his trembling has gotten worse as his Parkinson's has advanced and this makes shaving more difficult and time-consuming for the PCA. Because Appellant cannot assist in any part of the shaving process, it is reasonable that it would take the PCA a full 10 minutes to retrieve and set up all shaving supplies, situate Appellant in an appropriate shaving position, shave him, and perform all related clean-up tasks (e.g. rinsing, putting away supplies, etc.). Appellant successfully demonstrated that MassHealth's modification does not give the PCA necessary time to assist Appellant in performing this ADL. See 130 CMR 450.204(A); see also 130 CMR 422.410.

The appeal is therefore APPROVED with respect to shaving at 10x1x7.

Dressing/Undressing

Next, Appellant demonstrated that MassHealth's modifications to dressing and undressing at 15 and 10 minutes, respectively, are insufficient to meet his care needs. The PCM agency requested 20 minutes per-day (20x1x7) for dressing, and 15 minutes per-day (15x1x7) for undressing. See Exh. 4, p. 17. The requested level of assistance is supported by the evidence in the record. The PCM evaluation findings show that Appellant requires maximum physical assistance with both upper body and lower body dressing/undressing, including donning and removing footwear. Id. [REDACTED] noted that due to his diagnoses and chronic pain, Appellant is unable to stand, has poor fine motor skills, and is unable to bend, stretch, reach, and grasp. Id. These findings were corroborated by Appellant and his PCA, who credibly testified that Appellant cannot participate in any phase of the dressing/undressing process, relying entirely on the PCA. Appellant explained how his increased trembling (due to Parkinson's) extends the time to complete this ADL and makes it more complicated for the PCA to undertake. Appellant's PCA testified to these difficulties, explaining that she first has to sit him upright in a chair to perform dressing/undressing assistance and that because "he does not move his body" and lacks sensation, it makes completion of the task longer. These factors, when considered together, warrant authorization of the full amount of time requested. See 130 CMR 450.204(A); see also 130 CMR 422.410.

The appeal is APPROVED with respect to dressing at 20x1x7 and undressing at 15x1x7.

Bladder Care

Appellant demonstrated that MassHealth's modification to the requested frequency of bladder care episodes is insufficient to meet his care needs. The PCM agency requested 5 minutes, 6x per-day (5x8x7) and MassHealth modified the request to 5 minutes, 6x per-day (5x6x7). See Exh. 4 at 19. The requested frequency is supported by the evidence in the record. The PCM evaluation findings show that Appellant requires maximum physical assistance with all toileting needs, including toilet hygiene and physical assist with clothing management; and that he is incontinent at least once-per-day. Id. Appellant's PCA testified that due to his medical condition, Appellant's bladder care needs exceed that of a typical individual. As a diabetic, Appellant will consume a significant amount of water resulting in increased urine output. This is further exacerbated by one of his Parkinson's medications, a side effect of which, is frequent urination. Considering the totality of circumstances, the requested frequency, which amounts to one bladder care episode every 2.25 hours,⁶ is medical necessary and within the aforementioned regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410.

The appeal is APPROVED with respect to bladder care at 5x8x7.

Undisputed Modifications

Finally, the appeal is DISMISSED with respect to the following modifications which Appellant did not dispute:

- (1) oral care at 2x2x7;
- (2) grooming/other/lotion application at 4x1x7; and
- (3) medication assistance at 1x6x7.

Order for MassHealth

Rescind notices dated 11/28/23 and 1/3/24. For the PA period beginning 11/29/2023 and ending 11/28/2024, approve the time, as requested in Appellant's PA request, for the following ADLs⁷:

- shaving (10x1x7);
- dressing (20x1x7);

⁶ MassHealth approved two episodes of nighttime bladder care between the hours of midnight to 6am. The modification at issue only pertains to Appellant's request for 8 day/evening episodes for the remaining 18-hour day, which is broken down as one episode every 2 hours and 15 minutes.

⁷ Changes are to be made retroactive to the start of the PA period.

- undressing (15x1x7);
- bladder care (5x8x7).

Modifications to oral care, “other” grooming (i.e. lotion application), and medication assistance may remain in place, as agreed to by Appellant.

Notify Appellant of the total adjusted weekly PCA hours accordingly.

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