

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2400216
Decision Date:	2/29/2024	Hearing Date:	1/31/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen, RN, 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	Issue:	PCA services
Decision Date:	2/29/2024	Hearing Date:	1/31/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Pro se
Hearing Location:	Quincy (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

By notice dated December 4, 2023, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on January 4, 2024. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and provided documents in support, Exhibit 4. Appellant appeared by phone. A summary of testimony and documentation follows.

Appellant is in her twenties with a diagnosis of Spinal Muscular Atrophy (SMA) and therefore is wheelchair bound with no use of her bilateral lower extremities. Appellant also has decreased bilateral hand grasp and strength, muscle weakness, bilateral hip contractures, and is unable to bend or twist. Exhibit 4 at 10.

On November 14, 2023, Northeast Arc, Inc., Appellant's Personal Care Management Agency (PCMA), submitted a re-evaluation for PCA services, requesting 57.5 PCA hours weekly on Appellant's behalf. On December 4, 2023, MassHealth modified Appellant's request and approved 51.25 PCA hours per week. Exhibit 1. On January 19, 2024, MassHealth notified Appellant that it had made a calculation error. Appellant was approved for 55.25 PCA hours per week. The dates of service were from December 23, 2023 to December 24, 2024. Exhibit 4 at 7.

MassHealth modified the requested PCA hours for three activities of daily living (ADLs): dressing, medication assistance, and other healthcare needs. Exhibit 4 at 7. MassHealth also modified two instrumental activities of daily living (IADLs): meal preparation and laundry. *Id.* At hearing, MassHealth restored the time requested in full for dressing, medication assistance and meal preparation. This approval is addressed in the order below.

In the area of other health care needs, Appellant requested 20 minutes, 1 time per day, 7 days per week for assistance with donning leg braces. MassHealth approved 15 minutes, 1 time per day, 7 days per week. *Id.* at 27. The MassHealth representative testified that MassHealth had previously approved 15 minutes daily for this task. The time requested is longer than would ordinarily take to provide this assistance.

Appellant testified that she must be lying down for her braces to be put on. The time requested includes a transfer in and out of her wheelchair. Appellant is transferred to her bed and her PCA puts the leg braces on while Appellant is lying down. The braces have many straps and go on over Appellant's clothes. Appellant remains lying on the bed for 30-60 minutes. The PCA then unstraps the braces and transfers Appellant back to her wheelchair. The braces are medically necessary for Appellant due to her contractures. Appellant testified that there is no change in how long it takes the PCA to assist her in this task, but was under the impression that 20 minutes had been approved previously. Appellant testified that this transfer is different from the other transfers MassHealth had approved, as she does her passive range of motion (PROM) in the morning and dons her leg braces later in the day, during lunch or a break in the work day. MassHealth had approved Appellant's request for transfers at 10 minutes, 6 times per day, 7 days per week. *Id.* at 14. MassHealth also approved assistance with PROM twice per day. *Id.* at 16.

In the area of laundry, Appellant requested 60 minutes per week. MassHealth approved 45 minutes per week, as there is another PCA consumer in the home and laundry is a shared task. Appellant testified that she lives independently from her brother, the other PCA consumer in the home. Appellant generates approximately one load of laundry per week but uses more towels than average due to her transfers in and out of the tub. Appellant's bedding is changed once per week. The laundry machines are located in the home. Appellant testified that she had been approved for 60 minutes for laundry assistance previously. The MassHealth representative testified that due to Covid flexibilities, more time was approved without the requirement for written justification.

Findings of Fact

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

1. On November 14, 2023, Appellant's PCMA submitted a re-evaluation for PCA services, requesting 57.5 weekly hours of PCA services on Appellant's behalf.
2. On December 4, 2023, MassHealth modified Appellant's request and approved 51.25 PCA hours per week from December 23, 2023 to December 24, 2024. Exhibit 1.
3. On January 19, 2024, MassHealth notified Appellant that it had made a calculation error. Appellant was approved for 55.25 PCA hours per week from December 23, 2023 to December 24, 2024. Exhibit 4 at 7.
4. Appellant filed a timely appeal on January 4, 2024. Exhibit 2.
5. Appellant is in her twenties with a primary diagnosis of SMA. Appellant is wheelchair bound with no use of her bilateral lower extremities. Appellant also has decreased bilateral hand grasp and strength, muscle weakness, bilateral hip contractures, and is unable to bend or twist. Exhibit 4 at 9.
6. For assistance with leg braces, Appellant requested 20 minutes, 1 time per day, 7 days per week. *Id.* at 27.
7. MassHealth approved 15 minutes, 1 time per day, 7 days per week.
8. Appellant requires a transfer to her bed for her PCA to put on the leg braces.
9. MassHealth had approved Appellant's request for transfers at 10 minutes, 6 times per day, 7 days per week. *Id.* at 14.

10. MassHealth approved assistance with PROM twice per day. *Id.* at 16.
11. For assistance with laundry, Appellant requested 60 minutes per week. *Id.* at 33.
12. MassHealth approved 45 minutes per week. *Id.*
13. The laundry machines are located in the home.
14. Appellant generates approximately one load of laundry per week.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(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 basic care such as bathing, personal hygiene, and grooming skills;
- (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.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

- (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 personal care services; and
 - (c) other special needs approved by the MassHealth agency as being

instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.

(1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

Here, it is undisputed that Appellant qualifies for PCA services. The only issues in dispute are MassHealth's modifications of assistance with leg braces and laundry.

Regarding assistance with leg braces, this appeal is approved. Given that Appellant requires 10 minutes for transfers, approval for 20 minutes for this task is justified. The six transfers that MassHealth had already approved would presumably cover the daily transfers Optum in and out of bed and the two transfers needed for twice-daily PROM, so the assistance with leg braces constitutes an additional transfer not included in the approved time.

Regarding laundry, this appeal is denied. Appellant's testimony did not justify the need for an increase in the amount of laundry time approved, as she only generates one independent load of laundry per week.

Order for MassHealth

Adjust the time approved in the December 4, 2023 notice to include the time restored at hearing for dressing, medication assistance, and meal preparation. In addition, restore time requested for assistance with leg braces to 20 minutes, 1 time per day, 7 days per week.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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