

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |                                      |                       |            |
|-------------------------|--------------------------------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Dismissed in part;<br>Denied in part | <b>Appeal Number:</b> | 2400544    |
| <b>Decision Date:</b>   | 03/28/2024                           | <b>Hearing Date:</b>  | 02/09/2024 |
| <b>Hearing Officer:</b> | Thomas Doyle                         |                       |            |

**Appearance for Appellant:**



**Appearance for MassHealth:**

Robin Brown, R.N.



*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

|                           |                                      |                          |                                      |
|---------------------------|--------------------------------------|--------------------------|--------------------------------------|
| <b>Appeal Decision:</b>   | Dismissed in part;<br>Denied in part | <b>Issue:</b>            | Prior Authorization,<br>PCA Services |
| <b>Decision Date:</b>     | 03/28/2024                           | <b>Hearing Date:</b>     | 02/09/2024                           |
| <b>MassHealth's Rep.:</b> | Robin Brown, R.N.                    | <b>Appellant's Rep.:</b> | [REDACTED]                           |
| <b>Hearing Location:</b>  | Remote (phone)                       | <b>Aid Pending:</b>      | 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 January 5, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on January 11, 2024. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

### Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. Appellant is a MassHealth member in her [REDACTED] who lives in the

community, and she appeared at hearing via telephone. She was represented by her son, who also appeared by phone. Appellant requested a Spanish interpreter for herself, and the interpreter appeared by phone. Appellant's son spoke English. Appellant has a primary diagnosis of osteoarthritis. (Ex. 4, p. 7; Testimony). Other medical history includes kidney issues, fatigue, memory loss and poor vision. Appellant lives alone. (Testimony). Appellant's personal care management (PCM) agency, Stavros Center for Independent Living, submitted a prior authorization request for PCA services requesting 49 hours/45 minutes day/evening hours per week. MassHealth modified appellant's request for PCA services to 45 hours/0 minutes day/evening hours per week. There is no aid pending, as the appellant declined it.

Under Mobility, assist with stairs, appellant requested time at 4 minutes an episode, 4 episodes a day 7 days a week. (Ex. 4, p. 11). MassHealth modified this time to 0 because MassHealth stated this was not part of the PCA program. (Testimony). After testimony from the appeal representative about the layout of the house and placement of stairs within the home and discussion between the parties, MassHealth offered time for this task at 4 minutes an episode, 2 times a day, 7 days a week. The appeal representatives agreed to this modification. (Testimony). As no dispute exists regarding the time requested for Mobility, stairs, this part of the appeal is dismissed.

Bathing, washing hair, was requested at 5 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified this to 0 time, stating the time requested for assistance with Bathing is longer than someone with appellant's physical needs and MassHealth already approved the maximum time for showering at 45 minutes. (Testimony; Ex. 4, p. 14). After testimony from the appeal representative and discussion between the parties, the appeal representative agreed to the modification of 0 time for washing hair. (Testimony). As no dispute exists for the time requested for Bathing, washing hair, because the appeal representative agreed to the modification by MassHealth, this part of the appeal is dismissed.

Regarding Meal Preparation, appellant requested 90 minutes total daily for breakfast, lunch, dinner and snacks. MassHealth modified this to 75 minutes total daily. (Testimony). The appellant had requested specifically 15 minutes for breakfast, 30 minutes for lunch, 40 minutes for dinner, and 5 minutes for a snack, for a total of 90 minutes each day. After testimony from the appeal representative MassHealth offered to approve 85 minutes for each day because testimony indicated appellant could get her own snacks. The appeal representative agreed to this modification. (Testimony). As no dispute exists for the time requested for Meal Preparation, because the appeal representative agreed to the modification by MassHealth, this part of the appeal is dismissed.

Shopping was requested for 90 minutes a week. MassHealth modified this to 75 minutes a week. (Testimony; Ex. 4, p. 31). After hearing testimony from the appeal representative, MassHealth revoked the modification and agreed to the requested time of 90 minutes a week for Shopping. (Testimony).

As no dispute exists for the time requested for Shopping because MassHealth revoked the modification and approved the requested time, this part of the appeal is dismissed. Housekeeping was requested for 90 minutes a week. MassHealth modified this to 75 minutes a week. (Testimony; Ex. 4, p. 30).

The appeal representative did not understand why the time allowed for housekeeping had decreased to 75 minutes because he stated nothing had changed in the way this task was done. MassHealth explained that during the Covid pandemic (pandemic) members were protected in their coverage and they would not lose coverage or have a decrease in benefits during the pandemic. (Testimony; Eligibility Operations Memo 20-09, April 7, 2020). MassHealth stated protections have been lifted, therefore MassHealth was conducting reviews of time requests for ADL's and IADL's. (Testimony). MassHealth asked the appeal representative why 75 minutes a week was insufficient. He stated he understood why the time changed due to the lifting of the pandemic protections but with appellant's age he had to make sure of a certain level of cleanliness. He stated that even 90 minutes was not enough time for housekeeping. (Testimony). MassHealth stated she could not approve an increase in time from 75 minutes. She explained it is an hour and fifteen minutes a week that adds up to 5 hours a month to keep the house tidy. Time should not be included for bathroom cleaning because that is accounted for in Bathing time as the PCA would clean the bathroom. Time for housekeeping does not include time to clean after meals because that time is considered in Meal Preparation. Lastly, MassHealth stated that 75 minutes is 15 minutes more than is usually give to most people.

## Findings of Fact

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

1. Appellant is a female MassHealth member in her [REDACTED] who lives in the community. (Testimony; Ex. 4, p. 1-3).
2. The appellant's medical diagnoses includes osteoarthritis, kidney issues, fatigue, memory loss and poor vision. (Ex. 4, p. 7-8; Testimony).
3. Appellant's personal care management (PCM) agency, Stavros Center for Independent Living, submitted a prior authorization request for PCA services requesting 49 hours/45 minutes day/evening hours per week. MassHealth modified appellant's request for PCA services to 45 hours/0 minutes day/evening hours per week. (Testimony; Ex. 4, p. 2).
4. The appellant filed this appeal in a timely manner on January 11, 2024. (Ex. 2).
5. There is no aid pending, as the appellant declined it (Ex. 5).

6. At hearing, the parties were able to resolve disputes related to PCA assistance with Mobility, stairs; Bathing, hair washing; Meal Preparation and Shopping. (Testimony).
7. The appellant seeks time for PCA assistance with Housekeeping as follows: 90 minutes a week. (Testimony; Ex. 4, p. 30).
8. MassHealth modified the requested time for Housekeeping to 75 minutes a week. (Testimony).
9. The appellant did not give any specific examples of why 90 minutes a week is needed for housekeeping.

## Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of 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 or grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

A service is “medically necessary” if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;**
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or

(G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

The appeal is dismissed as to the following ADL's and IADL's. At hearing, the parties were able to resolve the dispute related to PCA assistance with Mobility, stairs. The parties agreed on 4 minutes an episode, 2 times a day, 7 days a week for this task. (Testimony). Regarding Bathing, washing hair, the parties agreed to 0 time for this task. (Testimony). The parties agree on the time for Meal Preparation at 85 minutes total for breakfast, lunch and dinner. (Testimony). Regarding Shopping, MassHealth revoked the modification for this task and agreed with appellant's request for 90 minutes a week. (Testimony).

#### Housekeeping:

Appellant requested 90 minutes a week for Housekeeping. MassHealth modified this time to 75 minutes a week. (Testimony; Ex. 4, p. 30). MassHealth asked the appeal representative why 75 minutes a week was insufficient. He stated he understood why the time changed due to the lifting of the pandemic protections, but with appellant's age he had to make sure of a certain level of cleanliness. He stated that even 90 minutes was not enough time for housekeeping. (Testimony). The MassHealth representative stated she could not approve an increase in time from 75 minutes. She explained it is an hour and fifteen minutes a week, adding up to 5 hours a month to keep the house tidy. Time should not be included for bathroom cleaning because that is accounted for in Bathing time, as the PCA would clean the bathroom while the appellant is being bathed. Time for housekeeping does not include time to clean after meals, because that time is considered in Meal Preparation. Lastly, MassHealth stated that 75 minutes is 15 minutes more than is usually give to most people.

In this testimony, the appeal representative did not give any specific examples of why 90 minutes a week is needed. He only made general statements about appellant's age and needing a level of general cleanliness. His testimony lacked any specificity to explain why 90 minutes a week is required. MassHealth's modification to 75 minutes a week is not unreasonable based upon the record. The request for 90 minutes a week for Housekeeping is denied.

Therefore, the appeal is dismissed in part and denied in part.

## **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.

## **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.

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Thomas Doyle  
Hearing Officer  
Board of Hearings

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

cc: Appeal Representative: Xavier Maisonet, 200 Narragansett Blvd., Chicopee MA 01013