

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Approved in Part	Appeal Number:	2401618
Decision Date:	4/23/2024	Hearing Date:	3/14/24
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN


Interpreter:

N/A



*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:	Dismissed in Part; Approved in Part	Issue:	PCA Services, Prior Authorization, Modification
Decision Date:	4/23/2024	Hearing Date:	3/14/24
MassHealth's Rep.:		Appellant's Rep.:	Kelly Rayen, RN
Hearing Location:	Remote (Tel)	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 December 19, 2023, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant requested assistance with various Activities of Daily Living (ADLs) and the time requested was longer than ordinarily required for someone with the Appellant's physical needs (See 130 CMR 422.410(A)(2), 130 CMR 422.410(A)(5), 130 CMR 422.410(A)(7), 130 CMR 450.204(A)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on February 10, 2024 (see 130 CMR 610.015(B)). A decision regarding the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization request for personal care services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 130 CMR 422.410(A)(2), 130 CMR 422.410(A)(5), 130 CMR 422.410(A)(7), 130 CMR 450.204(A)(1) in modifying the Appellant's prior authorization request for personal care services.

Summary of Evidence

The Appellant is a MassHealth member whose primary diagnoses includes spinal cord injury, C6, with a suprapubic catheter, and neurogenic bowel and bladder related issues. The Appellant is wheelchair dependent, and the Appellant's relevant medical history includes urinary tract infections, left hand surgery in the fall of 2023. (Exhibit 5, pg.7) MassHealth received a prior authorization request for renewal of services submitted by [REDACTED] the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) On December 19, 2023, MassHealth made 3 modifications to the Appellant's prior authorization request for PCA services. (Exhibit 1, Exhibit 5 and Testimony). Specifically, MassHealth modified the following: 1) ADL – Passive Range of Motion, from 30 minutes, 2 times a day, 7 days a week, for the upper left extremities and 30 minutes 2 times a day, 7 days a week, for the lower left extremities, to 20 minutes, 2 times a day, 7 days a week, for the upper left extremities and 20 minutes 2 times a day, 7 days a week, for the lower left extremities (Exhibit 5, pg. 13, Testimony) 2) ADL – Bladder care, flushing the catheter, from 10 minutes, 2 times a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 20-21, Testimony) and 3) Assistance with Medications, from 5 minutes, 4 times a day, 7 days a week to 2 minutes, 4 times a day, 7 days a week. (Exhibit 5, pg. 22, Testimony)

Regarding the modification of 1) ADL – Passive Range of Motion, from 30 minutes, 2 times a day, 7 days a week, for the upper left extremities and 30 minutes 2 times a day, 7 days a week, for the lower left extremities, to 20 minutes, 2 times a day, 7 days a week, for the upper left extremities and 20 minutes 2 times a day, 7 days a week, for the lower left extremities (Exhibit 5, pg. 13, Testimony), MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with Passive Range of Motion exercises. (Testimony) The Appellant described the exercises he is required to perform for stretching and strengthening, as ordered by his medical care team, including surgeons. (Testimony) Based upon the testimony of the Appellant, MassHealth agreed to restore the time as requested. This resolved the appeal issue related to this modification.

Regarding the modification of 2) ADL – Bladder care, flushing the catheter, from 10 minutes, 4 times a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 20-21, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant's physical needs for bladder care, flushing the catheter. (Testimony) The Appellant testified and explained that the procedure including irrigation, not

just flushing of the catheter. MassHealth explained that irrigation required a skilled nurse and was not a task that MassHealth could allot time to a PCA to perform. (Testimony) The Appellant testified that he was informed that were he to obtain a visiting skilled nurse to perform the task, the visiting skilled nurse would also perform physical therapy in-home, and he would no longer be able to attend physical therapy at his doctor's office. (Testimony) Based upon the testimony of MassHealth, the Appellant agreed to the modification to 5 minutes, 1 time a day, 7 days a week. This resolved the appeal issue related to this modification.

Regarding the modification of 3) Assistance with Medications, from 5 minutes, 4 times a day, 7 days a week to 2 minutes, 4 times a day, 7 days a week. (Exhibit 5, pg. 22, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant's physical needs for assistance with medications. (Testimony) The Appellant explained that for most requested times, he is required to ingest 11, pills, separately, which requires a refill of water by the end of the medication session. (Testimony) MassHealth responded that the time for task is for the physical handing of the pills and water and does not include time to ingest the pills. (Testimony). The Appellant indicated that he is unable to ingest 11 pills, separately, with water within the 2 minutes allotted by MassHealth. (Testimony) No compromise was reached between the parties on this issue (Assistance with Medications) and it is addressed in the Analysis and Conclusions of Law section below.

Findings of Fact

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

1. The Appellant is a MassHealth member whose primary diagnoses includes spinal cord injury, C6, with a suprapubic catheter, and neurogenic bowel and bladder related issues. (Exhibit 5, pg.7)
2. The Appellant is wheelchair dependent, and the Appellant's relevant medical history includes urinary tract infections, left hand surgery in the fall of 2023. (Exhibit 5, pg.7)
3. On December 19, 2023, MassHealth made 3 modifications to the Appellant's prior authorization request for PCA services. (Exhibit 1, Exhibit 5 and Testimony).
4. Specifically, MassHealth modified the following: 1) ADL – Passive Range of Motion, from 30 minutes, 2 times a day, 7 days a week, for the upper left extremities and 30 minutes 2 times a day, 7 days a week, for the lower left extremities, to 20 minutes, 2 times a day, 7 days a week, for the upper left extremities and 20 minutes 2 times a day, 7 days a week, for the lower left extremities (Exhibit 5, pg. 13, Testimony) 2) ADL – Bladder care, flushing the catheter, *from 30 minutes, 1 time a day, 7 days a week* to 5 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 20-21, Testimony) and 3) Assistance with Medications, from 5 minutes, 4

times a day, 7 days a week to 2 minutes, 4 times a day, 7 days a week. (Exhibit 5, pg. 22, Testimony)

5. Regarding the modification of 1) ADL – Passive Range of Motion, from 30 minutes, 2 times a day, 7 days a week, for the upper left extremities and 30 minutes 2 times a day, 7 days a week, for the lower left extremities, to 20 minutes, 2 times a day, 7 days a week, for the upper left extremities and 20 minutes 2 times a day, 7 days a week, for the lower left extremities (Exhibit 5, pg. 13, Testimony), MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with Passive Range of Motion exercises. (Testimony) The Appellant described the exercises he is required to perform for stretching and strengthening, as ordered by his medical care team, including surgeons. (Testimony) Based upon the testimony of the Appellant, MassHealth agreed to restore the time as requested. This resolved the appeal issue related to this modification.
6. Regarding the modification of 2) ADL – Bladder care, flushing the catheter, from 10 minutes, 4 times a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 20-21, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant's physical needs for bladder care, flushing the catheter. (Testimony) The Appellant testified and explained that the procedure including irrigation, not just flushing of the catheter. MassHealth explained that irrigation required a skilled nurse and was not a task that MassHealth could allot time to a PCA to perform. (Testimony) The Appellant testified that he was informed that were he to obtain a visiting skilled nurse to perform the task, the visiting skilled nurse would also perform physical therapy in-home, and he would no longer be able to attend physical therapy at his doctor's office. (Testimony) Based upon the testimony of MassHealth, the Appellant agreed to the modification to 5 minutes, 1 time a day, 7 days a week. This resolved the appeal issue related to this modification.
7. Regarding the modification of 3) Assistance with Medications, from 5 minutes, 4 times a day, 7 days a week to 2 minutes, 4 times a day, 7 days a week. (Exhibit 5, pg. 22, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant's physical needs for assistance with medications. (Testimony) The Appellant explained that for most requested times, he is required to ingest 11, pills, separately, which requires a refill of water by the end of the medication session. (Testimony) MassHealth responded that the time for task is for the physical handing of the pills and water and does not include time to ingest the pills. (Testimony). The Appellant indicated that he is unable to ingest 11 pills, separately, with water within the 2 minutes allotted by MassHealth. (Testimony) No compromise was reached between the parties on this issue (Assistance with Medications) and it is addressed in the Analysis and Conclusions of Law section below.

Analysis and Conclusions of Law

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(A) 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

(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.

(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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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/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 PCA 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 PCM 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 PCA 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.

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). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

MassHealth made 3 modifications to the Appellant's prior authorization request for PCA services. (Exhibit 1, Exhibit 5 and Testimony). Specifically, MassHealth modified the following: 1) ADL – Passive Range of Motion, from 30 minutes, 2 times a day, 7 days a week, for the upper left extremities and 30 minutes 2 times a day, 7 days a week, for the lower left extremities, to 20

minutes, 2 times a day, 7 days a week, for the upper left extremities and 20 minutes 2 times a day, 7 days a week, for the lower left extremities (Exhibit 5, pg. 13, Testimony) 2) ADL – Bladder care, flushing the catheter, from 10 minutes, 2 times a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 20-21, Testimony) and 3) Assistance with Medications, from 5 minutes, 4 times a day, 7 days a week to 2 minutes, 4 times a day, 7 days a week. (Exhibit 5, pg. 22, Testimony) 2 Modifications resolved, and 1 Modifications remains at issue in the instant appeal.

Regarding the modification of 1) ADL – Passive Range of Motion, from 30 minutes, 2 times a day, 7 days a week, for the upper left extremities and 30 minutes 2 times a day, 7 days a week, for the lower left extremities, to 20 minutes, 2 times a day, 7 days a week, for the upper left extremities and 20 minutes 2 times a day, 7 days a week, for the lower left extremities (Exhibit 5, pg. 13, Testimony), based upon the testimony of the Appellant, MassHealth agreed to restore the time as requested. This resolved the appeal issue related to this modification.

Regarding the modification of 2) ADL – Bladder care, flushing the catheter, from 10 minutes, 4 times a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 20-21, Testimony) based upon the testimony of MassHealth, the Appellant agreed to the modification to 5 minutes, 1 time a day, 7 days a week. This resolved the appeal issue related to this modification.

Regarding the modification of 3) Assistance with Medications, from 5 minutes, 4 times a day, 7 days a week to 2 minutes, 4 times a day, 7 days a week. (Exhibit 5, pg. 22, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant's physical needs for assistance with medications. (Testimony) The Appellant explained that for most requested times, he is required to ingest 11, pills, separately, which requires a refill of water by the end of the medication session. (Testimony) MassHealth responded that the time for task is for the physical handing of the pills and water and does not include time to ingest the pills. (Testimony). The Appellant indicated that he is unable to ingest 11 pills, separately, with water within the 2 minutes allotted by MassHealth. (Testimony)

Based upon the evidence presented at Hearing, I find that the Appellant has met the burden, by a preponderance of evidence, to show that MassHealth (Optum)'s administrative determination is invalid. The Appellant presented testimony that he is required to ingest 11 separate pills most of the times he takes medicine. (Testimony) The Appellant presented evidence that this required water with each individual pill, requiring a fill up of water by the end of the medication session. (Testimony) The Appellant presented testimony that he is physically unable to ingest 11 pills with water within the 2 minutes allotted by MassHealth/Optum. (Testimony) Accordingly, this Appeal is APPROVED, and MassHealth/Optum is to allot 5 minutes, 4 times a day, 7 days a week for medication assistance as requested.

Order for MassHealth

Approve the following PCA hours:

- 1) ADL – Passive Range of Motion, 30 minutes, 2 times a day, 7 days a week, for the upper left extremities and 30 minutes 2 times a day, 7 days a week, for the lower left extremities (as agreed at Hearing)
- 2) ADL – Bladder care, flushing the catheter, 5 minutes, 1 time a day, 7 days a week (as agreed at Hearing)
- 3) Assistance with Medications, 5 minutes, 4 times a day, 7 days a week (as requested by the Appellant)

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.

Patrick M. Grogan
Hearing Officer
Board of Hearings

cc:

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

