

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2402394
Decision Date:	4/29/2024	Hearing Date:	03/22/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Robin Brown, OTR/L



*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; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	4/29/2024	Hearing Date:	03/22/2024
MassHealth's Rep.:	Robin Brown	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South 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 January 29, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on February 15, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 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 licensed occupational therapist and clinical appeals reviewer. The appellant appeared at hearing via telephone with his attorney from Greater Boston Legal Services.

The MassHealth representative testified that the documentation submitted shows the appellant is an adult under the age of 65 with primary diagnoses of cerebral vascular accident (CVA, or stroke) with left hemiparesis, traumatic brain injury, neurogenic bladder, and end-stage renal disease. Relevant medical history shows he also has diabetes, atrial fibrillation, and osteoarthritis. His PCA lives with him in the appellant's apartment. On January 11, 2024, the appellant's personal care management (PCM) agency, [REDACTED] submitted a prior authorization request for PCA services requesting 64 hours and 30 minutes per week for dates of service of January 29, 2024 through January 28, 2025. On January 29, 2024, MassHealth informed the appellant that it had modified the request to 60 hours and 45 minutes per week. MassHealth made modifications related to PCA assistance with bathing, meal preparation, housekeeping, and shopping.

Based on testimony at hearing, MassHealth approved the appellant for the requested 90 minutes per week for housekeeping. PCA assistance with bathing, meal preparation, and shopping remain at issue. The appellant is a maximum assist for bathing and totally dependent for meal preparation and shopping.

Bathing

The appellant requested 60 minutes, 1 time per day, 7 days per week and 15 minutes, 1 time per day, 7 days per week (for a total of 75 minutes per day) for PCA assistance with bathing. MassHealth modified the request to 55 minutes per day, 7 days per week because the time requested for assistance is longer than ordinarily required for someone with his physical needs. The MassHealth representative explained that PCA assistance time is only for the hands-on time, which would involve getting into the tub, washing, drying, putting on his gait belt and sling, and transferring to and from his wheelchair to the shower chair.

The appellant explained that due to his brain injury, his equilibrium is absent. Before his shower, the PCA goes into the bathroom and prepares the bathroom for him. It is a wheel-in shower and the water leaks, so the PCA has to put out towels. Then, the appellant is transferred into his wheelchair and brought to the bathroom. He needs a gait belt and arm sling in the shower because he had a shoulder replacement in his left arm and it doesn't work well and is painful without the sling. When he is sitting, he keeps his arm propped on a pillow, but that isn't an option in the shower. He says he has timed it and his shower process takes a full hour and it is hands-on for the PCA the whole time. The appellant can wash parts of his own body, but the PCA does his

back, groin, armpits, backside, and gets the soap for him. The PCA uses a special soap for his back because of compromised skin. The PCA also washes the appellant's hair in the shower. The PCA must dry him very carefully after the shower because of skin breakdown issues. The additional 15 minutes is for washing up before bed. He has significant diarrhea issues due to various medications and has accidents throughout the day, necessitating the extra wash at night. This evening bed bath is important for him because of his skin issues.

The MassHealth representative responded that he was approved for a lot of time for bowel care (15 minutes, 2 times per day, 7 days per week and 10 minutes, 2 times per night, 7 nights per week) which includes time for hygiene.

Meal Preparation

The appellant requested 95 minutes per day for meal preparation broken down as follows: 15 minutes for breakfast, 30 minutes for lunch, 45 minutes for dinner, and 5 minutes for snacks. MassHealth modified the request to 90 minutes per day because the documentation did not support the additional time. The MassHealth representative stated that for someone who is totally dependent, 90 minutes per a day is typically the most MassHealth approves unless there is some extraordinary circumstance.

The appellant and his representative pointed to the time-for-task tool which the appellant's attorney provided prior to hearing. The average time provided for breakfast is 20 minutes, lunch 30 minutes, dinner 45 minutes, and snack 5 minutes. The appellant only asked for 15 minutes for breakfast and he needs the time for snacks given his disability. He has renal issues, had a kidney transplant, and is diabetic. He is on a strict renal diet. A typical breakfast includes scrambled eggs and a bran muffin; for lunch, scrambled eggs with broccoli or other vegetables (he noted that vegetables are really important for his digestive system); and for dinner, chicken and vegetables. His snack is an Atkins meal replacement shake one or two times per day which he needs to keep his sugar up. The PCA needs all this time to cook and clean up, especially since scrambled eggs are messy to wash up after.

The MassHealth representative responded that the time-for-task tool is not hard and fast. It is only one of a number of things to be considered. There is nothing critical to his medical needs necessitating the additional 5 minutes. A renal diet does not increase meal preparation time. Instead, it has to do with being better about food selection.

Shopping

The appellant requested 90 minutes per week for shopping. MassHealth modified the request to 75 minutes per week because the time requested was longer than ordinarily required for someone with his physical needs.

The appellant testified that he cannot participate in any of the shopping. The PCA does all the shopping himself. He goes to the supermarket and pharmacy for both medications and medical supplies. It involves multiple trips per week.

Findings of Fact

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

1. The appellant is an adult under the age of 65 with primary diagnoses of CVA with left hemiparesis, traumatic brain injury, neurogenic bladder, and end-stage renal disease (Testimony and Exhibit 4).
2. Relevant medical history shows he has diabetes, atrial fibrillation, and osteoarthritis (Testimony and Exhibit 4).
3. On January 11, 2024, MassHealth received a prior authorization request for PCA services requesting 64 hours and 30 minutes per week for dates of service of January 29, 2024 through January 28, 2025 (Testimony and Exhibit 4).
4. On January 29, 2024, MassHealth informed the appellant that it modified the request to 60 hours and 45 minutes per week (Testimony and Exhibits 1 and 4).
5. MassHealth made modifications related to PCA assistance with bathing, meal preparation, housekeeping, and shopping (Testimony and Exhibit 4).
6. At hearing, MassHealth fully restored the time as requested for housekeeping to 90 minutes per week, which resolved the dispute related to PCA assistance with housekeeping (Testimony).
7. The appellant seeks time for PCA assistance with bathing as follows: 60 minutes, 1 time per day, 7 days per week and 15 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
8. MassHealth modified the request for bathing to 55 minutes per day, 7 days per week (Testimony and Exhibit 4).
9. The appellant requires the additional 15 minutes per day for an evening bed wash due to diarrhea and skin issues (Testimony).
10. The appellant seeks PCA assistance with meal preparation as follows: 15 minutes for breakfast, 30 minutes for lunch, 45 minutes for dinner, and 5 minutes for snacks, for a total

of 95 minutes per day (Testimony and Exhibit 4).

11. MassHealth modified the request for meal preparation to 90 minutes per day (Testimony and Exhibit 4).
12. The PCA cooks breakfast, lunch, and dinner for the appellant who cannot assist with the task. The PCA cleans up after each meal and provides the appellant with one or two pre-made Atkins meal replacements shakes. (Testimony).
13. The appellant seeks PCA assistance with shopping as follows: 90 minutes per week (Testimony and Exhibit 4).
14. MassHealth modified the request for shopping to 75 minutes per week (Testimony and Exhibit 4).
15. The appellant is unable to help with shopping. The PCA makes multiple trips per week to the supermarket and pharmacy. (Testimony).
16. The appellant is a maximum assist for bathing and totally dependent for meal preparation and shopping (Exhibit 4).

Analysis and Conclusions of Law

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.

The appeal is dismissed as to PCA assistance with housekeeping because at hearing, parties were able to resolve the dispute. MassHealth fully restored the time as requested for housekeeping to 90 minutes per week.

As to the appellant's request for PCA assistance with bathing, the appeal is approved. The appellant requested 60 minutes, 1 time per day, 7 days per week and 15 minutes, 1 time per day, 7 days per week, but MassHealth only approved 55 minute per day. The appellant has demonstrated that the time for bathing and the separate time for an evening wash take longer than the time approved. The appellant's daily shower involves the PCA preparing the bathroom for him; transferring him to and from his wheelchair and into and out of the shower chair; putting on the gait belt and arm sling; washing his back with a special soap because of compromised skin; washing his groin, armpits, and hair; and drying him very carefully to prevent any further skin breakdown issues. Due to medications, the appellant has issues with diarrhea throughout the day

and requires an evening bed wash. This is particularly important because of his ongoing skin issues. For these reasons, the appellant has shown that additional PCA assistance with bathing is medically necessary. The appellant is approved for bathing as requested: 60 minutes, 1 time per day, 7 days per week and 15 minutes, 1 time per day, 7 days per week.

As to the appellant's request for meal preparation, the appeal is denied. The appellant requested 15 minutes for breakfast, 30 minutes for lunch, 45 minutes for dinner, and 5 minutes for snacks. MassHealth approved 90 minutes per day. The appellant argued that he requested less time than the time-for-task tool recommends for breakfast and he needs that additional 5 minutes for snacks. The appellant, however, testified that his snack is a pre-made Atkins meal replacement shake one or two times per day. The appellant did not show how such a snack requires additional time for meal preparation. For these reasons, he has not demonstrated that an additional 5 minutes per day is medically necessary for meal preparation.

As to the appellant's request for shopping, the appeal is approved. The appellant requested 90 minutes per week for shopping, which MassHealth modified to 75 minutes per week. The appellant is totally dependent on his PCA for shopping and does not participate in the task. His PCA makes multiple trips per week to the supermarket and pharmacy for both medications and medical supplies. Through his testimony, the appellant has shown that additional PCA time for shopping is necessary and he is approved for the 90 minutes per week as requested.

For these reasons, the appeal is approved in part, denied in part, and dismissed in part.

Order for MassHealth

Approve 60 minutes, 1 time per day, 7 days per week and 15 minutes, 1 time per day, 7 days per week for bathing; approve 90 minutes per week for shopping; and implement the agreement made at hearing for housekeeping (90 minutes per week). All adjustments should go retroactive to the beginning of the prior authorization period, January 29, 2024.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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

