

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Denied-in-part	Appeal Number:	2406640
Decision Date:	7/22/2024	Hearing Date:	05/28/2024
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:

Pro se;




Appearance for MassHealth:

Robin Brown, OTR/L, Clinical Appeals
Reviewer, 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:	Personal Care Attendant Services
Decision Date:	7/22/2024	Hearing Date:	05/28/2024
MassHealth's Rep.:	Robin Brown, OTR/L	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	Yes

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 4/10/24, MassHealth informed Appellant that it was modifying her prior authorization (PA) request for personal care attendant (PCA) services. See Exhibit 1 and 130 CMR 450.204.(A)(1). Appellant appealed the notice in a timely manner on 4/25/24. See 130 CMR 610.015(B); Exhibit 1, p. 2. Modification of a PA request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

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

Issue

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

Summary of Evidence

At the hearing, MassHealth was represented by a licensed occupational therapist/clinical appeals reviewer. Appellant appeared at the hearing and was accompanied by an advocate from her personal care management (PCM) agency, the [REDACTED]. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth representative presented the following information: Appellant is an adult MassHealth member under the age of 65 and is enrolled as a “consumer” in the MassHealth personal care attendant (PCA) program. On 3/8/24, a registered nurse (R.N.) from Appellant’s PCM agency, [REDACTED] performed a PCA re-evaluation of Appellant to determine her ongoing need for assistance in performing activities of daily living (ADLs) and instrumental activities of daily living (IADLs). See Exh. 4, p. 6-9. The PCM’s written assessment indicates that Appellant has primary diagnoses of cerebral palsy and seizure disorder, with a history of benign breast tumors, migraines, and kidney stones. Id. She is wheelchair bound, has pain and decreased strength in her shoulders, and decreased fine motor control. See id. On 3/29/24, pursuant to its assessment, Appellant’s PCM agency sent MassHealth an prior authorization (PA) request seeking 75 hours and 30 minutes per-week of PCA services for dates of service beginning 5/27/2024 and ending 5/26/2025. Id. at 2.

On 4/10/24, MassHealth modified Appellant’s PA request by authorizing 71 hours and 15 minutes per-week of PCA services. Id. The modification was based on reductions to the times requested for the ADLs of “bladder care” and “other healthcare needs,” i.e., in/out of pool for aquatic therapy. See Exh. 1.

Bladder Care

The MassHealth representative testified that Appellant, through her PCM agency, included two requests related to the ADL of bladder care; specifically: 10 minutes, 8x per-day, 7 days per-week (10x8x7) and 15 minutes per-week (15x1x1). See Exh. 4, p. 20. The PCM agency noted that Appellant is totally dependent on her PCA to provide physical assistance with toilet hygiene, clothing management and realignment, changing of absorbent product, and related transfers. Id. The need for assistance is based on Appellant’s non-ambulatory status, decreased strength, limited volitional movement of the lower extremity, decreased strength in shoulders, decreased gross and fine motor coordination and inability to bend and twist. Id. The PCM agency noted that Appellant is “occasionally incontinent of urine requiring hygiene, clothing change and cleaning of [her] wheelchair,” which MassHealth asserted, believed, served the basis for the additional request of 15 minutes per-week. Id.

Through its 4/10/24 notice, MassHealth modified the first requested line-item by adjusting downward the frequency of allotted bladder care episodes from 8 to 6 times per-day, thereby

approving 10x6x7. See Exh. 1. The MassHealth representative explained that in addition to the 6 bladder care episodes approved, MassHealth also approved 2 bladder care episodes for the nighttime, 2 bowel care episodes per day, and 2 bowel care episodes per night, resulting in a total of 12 trips to the bathroom every 24 hours. The MassHealth representative explained that bladder training programs typically involve toileting every two hours, and that toileting more frequently than this can cause the bladder to weaken or become more sensitive, resulting in more incontinence. Appellant's total combined request for 14 toileting episodes per-day exceeds normal limits.

As to the second line-item, MassHealth denied the request for 15 minutes per-week for cleaning the wheelchair. The MassHealth representative testified that this task was already approved under Appellant's request for 35 minutes per-week (35x1) for the PCA to "maintain equipment" (i.e., "wheelchair, other") "so it is safe and available for consumer's daily use." Id. at 30. The MassHealth representative testified that the requests were appropriately modified in accordance with 130 CMR 422.410(A) and 130 CMR 450.204(A)(1) because the times requested were longer than ordinarily required for someone with Appellant's physical needs. See Exh. 1. Id.

Appellant and her advocate testified that the decrease in bladder care episodes was not appropriate as she requires at least 8 episodes of bladder care per-day, in addition to the other approved toileting episodes involving bowel and nighttime care. Appellant testified that for purposes of this hearing, she had been monitoring the frequency of toileting episodes. In the past 5 hours, she had three bladder care episodes, which is approximately once every 1.5 hours. Appellant testified that she has ongoing issues with kidney stones. To prevent the development of kidney stones, she has been instructed by her urologist to drink a lot of fluids and to empty her bladder as frequently as possible. Her urologist specifically advised her not to hold in her urine. She has cerebral palsy, which affects every muscle in her body, including her bladder, and prevents her from following normal standards cited by MassHealth. In addition, she is now over the age of 50. Her doctor has stated that it is not appropriate for her to follow the same standards that would apply to someone, for example, that was 10 years younger. Attempting a toileting program would not improve her issue with leakage. Appellant noted that if the requested frequency was approved, she would have less leakage, and this would likely offset the need for second line item requested to cleaning the wheelchair. Appellant was not willing to accept the modification to bladder. She needs toileting assistance slightly more than every two hours, which is what her request accommodates.

In addition to her testimony, Appellant referred to letters she submitted in advance of the hearing, and were offered in support of her PA request, which included the following:

- Through a letter dated 5/7/24, Appellant's urologist, [REDACTED] wrote "to strongly emphasize the medical necessity of continuing her current toileting assistance

with regularly scheduled aides.” See Exh. 6 at 4. In support thereof, [REDACTED] stated the following:

[Appellant] has a long history of cerebral palsy and congenital neurogenic bladder; that he has managed the urologic aspects of her care since 2015; she has “very poor perianal and peri pelvic sensation; she has required assistance with aids in helping her with toileting practices; these practices require regular use of both diapers as well as liners in order to facilitate a minimum necessary degree of cleanliness to avoid significant urologic problems which will invariable ensue in the absence of these devices.

She has a long history of developing recurrent, and often multi-drug resistant urinary tract infections as well as recurrent urolithiasis when these practices are not adhered to diligently, [Appellant] does the best she can on her own but in the absence of regular aid support to assist her in getting in and out of her chair and/or with a reduction in her current use of diapers and liners her peri pelvic and perianal hygiene will rapidly deteriorate. In this situation it is a virtual certainty that she will eventually develop severe urinary tract infections and exacerbate her current baseline problems with kidney stones as well as increasing the likelihood of developing pressure sores. Id.

- In a letter dated 5/8/24, Appellant’s nephrologist, [REDACTED] requested that Appellant be authorized to keep her current level of PCA assistance. See id. at 5. [REDACTED] explained that she treats Appellant for kidney stones, and that the “standard care for stone prevention is to hydrate at least 3 liters (100 oz) of fluid to produce 2.5 liters of urine; [and] [t]his level of hydration results in frequent urination.” Id.
- Through a letter dated 5/9/24, Appellant’s PCA wrote that she recently witnessed Appellant have a fall which resulted in her needing more PCA help; and that due to her recent injury, she now has a much hard time doing transfers to the bathroom in time, resulting in more accidents; and that she now requires more care than ever. Id. at 3.

Other Healthcare Needs: In/Out of Pool

Under the ADL category of “other healthcare needs,” Appellant’s PCM agency requested 30 minutes 1x per-day, 4 days per-week (30x1x4) for her PCA to assist with transfers in and out of her home pool to perform aquatic exercise program, and to assist with clothing change when she comes out of the pool. See Exh. 4, p. 23. MassHealth denied this request as a non-covered service under 130 CMR 422.412(A). Under this regulation, MassHealth indicates it does not pay for social services, such as respite care, vocational rehabilitation, recreational services, among other specified services. The MassHealth representative explained that the only exercise that is recognized as a covered PCA activity is passive range of motion (PROM). In the instant PA

period, Appellant requested, and MassHealth approved 10x2x7 for PROM on all four extremities, for a combined total of 80 minutes per-day for PROM. See id. at 13. MassHealth does not consider aquatic therapy to be medically necessary.

Appellant and her advocate responded that aqua therapy falls under PROM and is not recreational. Appellant explained that the only way for PROM exercises to work is to perform them in the water, and that this is prescribed by her physician as medically necessary. Appellant testified her “limbs won’t move on dry land.” Because it is so necessary, she put a pool in her home and made it indoors so that she can perform her aquatic PROM exercises year-round. Appellant clarified that she does PROM every day, as was requested, and that four times per-week, she can perform the exercises in her pool. The time requested under “other healthcare needs” is so the PCA can assist in the clothing management and transfer tasks to get her in and out of the pool. It is not a separate exercise. Due to her cerebral palsy, aquatic therapy is the only way to keep her limbs from contracting and stiffening. Appellant rejected MassHealth’s characterization of the activity as a social activity. Rather, she needs it to maintain strength. Appellant sees a physical therapist approximately once per-year, which is to design the home regimen. She is not receiving this service under another program.

Appellant also referred to a letter entered into the record, dated 5/14/24 by her doctor, [REDACTED]. In the letter, [REDACTED] opined that Appellant required the full amount of PCA assistance requested, based, in part, on her “need to continue to attend aquatic therapy as it allows her time out of her wheelchair and reduces swelling and spasticity.” See Exh. 5. [REDACTED] also cited, in support of the requested PCA hours, Appellant’s husband “inability to contribute to the [extensive] level of assistance [Appellant] requires due to his own underlying illness,” and that “cutting [Appellant’s] PCA hours would hinder her quality of life.” Id.

Findings of Fact

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

1. Appellant is an adult MassHealth member under the age of 65.
2. Appellant has primary diagnoses of cerebral palsy and seizure disorder, with a history of benign breast tumors, migraines, and kidney stones; she is wheelchair bound, has pain and decreased strength in her shoulders, and decreased fine motor control.
3. On 3/29/24, Appellant’s PCM agency sent MassHealth a PA request seeking 75 hours and 30 minutes per-week of PCA services for dates of service 5/27/2024 through 5/26/2025.
4. On 4/10/24, MassHealth modified Appellant’s PA request by authorizing 71 hours and

15 minutes per-week of PCA services; specifically, by modifying the times for “bladder care” and “other healthcare needs,” i.e., in/out of pool for aquatic therapy.

Bladder Care

5. In one of two requests for “bladder care,” Appellant requested 10 minutes, 8x per-day, 7 days per-week (10x8x7) for assistance related to toilet hygiene, clothing management, changing of absorbent product, and related transfers.
6. Through a second line item requested under “bladder care,” Appellant requested 15 minutes per-week (15x1x1) for the PCA to clean her wheelchair due to incontinence.
7. Through its 4/10/24 notice, MassHealth modified the first request by adjusting the frequency down to 6x per-day (10x6x7) and denied the request for 15x1.
8. Under the ADL of “toileting,” MassHealth approved additional toileting assistance for bowel care and nighttime toileting care.
9. Appellant is totally dependent on her PCA for bladder care activities due to her non-ambulatory status, decreased strength, limited volitional movement of the lower extremity, decreased strength in shoulders, decreased gross and fine motor coordination and inability to bend and twist.
10. Appellant’s need for frequent bladder care assistance results from her long history of cerebral palsy and congenital neurogenic bladder, which is associated with poor perianal and peri-pelvic sensation; she has a long history of developing recurrent, and often multi-drug resistant urinary tract infections as well as recurrent urolithiasis.
11. Appellant requires both diapers and liners in order to facilitate a minimum necessary degree of cleanliness to avoid significant urologic problems.
12. Appellant’s urologist opined that in the absence of a regular aid support to assist Appellant in getting in and out of her chair and/or with a reduction in her current use of diapers and liners her peri pelvic and perianal hygiene will rapidly deteriorate; resulting in severe urinary tract infections and exacerbate her current baseline problems with kidney stones as well as increasing the likelihood of developing pressure sores.
13. To prevent development of kidney stones, Appellant’s nephrologist, has ordered Appellant to hydrate with at least 3 liters (100 oz) of fluid to produce 2.5 liters of urine, which, her nephrologist has asserted, results in frequent urination.

14. An increase in authorized bladder care episodes would reduce the amount of leakage she experiences and the corresponding need for additional cleaning as requested.

Other Healthcare Needs

15. Under the ADL category of “other healthcare needs,” Appellant’s PCM agency requested 30 minutes 1x per-day, 4 days per-week (30x1x4) for her PCA to assist with clothing changes and transfers in and out of her home pool to perform aquatic exercise program.
16. MassHealth denied this request as a non-covered service under 130 CMR 422.412(A); and also noted that it approved Appellant’s request for 80 minutes per-day for PROM exercises.
17. Four days of the week, Appellant does her PROM exercises in the pool, as prescribed by her physician, which reduces swelling and spasticity, and keeps her limbs from contracting and stiffening.
18. In order to do her PROM exercises in the pool, she requires physical assistance to change clothes and be transferred in and out of the pool.

Analysis and Conclusions of Law

MassHealth covers 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:¹ First, the services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” See 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

¹ 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 prerequisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive PCA assistance to meet her care needs.

The MassHealth PCA program covers medically necessary assistance with the following ADLs:

(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 bathing, personal hygiene, or grooming;
- (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.

See 130 CMR 422.410 (emphasis added).

MassHealth will approve time in accordance with the “activity time performed by a PCA in providing assistance with the [task].” See 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with his or her ADL/IADL. See 130 CMR 422.402.

MassHealth does not, however, pay for those services it considers “non-covered” PCA services, which include, but are not limited to, the following:

(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

.....

See 130 CMR 422.412.

Bladder Care

Appellant requested 10 minutes, 8x per-day, 7-days per-week (10x8x7) for physical assistance with bladder care, plus an additional 15 minutes per-week (15x1) for assistance cleaning her wheelchair due to incontinence. See Exh. 4, p. 20. MassHealth modified the frequency of bladder care episodes to 6x per-day (10x6x7) and denied the request for an additional 15 minutes per-week. With respect to the frequency, MassHealth found that 8 bladder care episodes, in addition to two toileting episodes for bowel care and nighttime toileting assistance, exceeded the amount of care ordinarily required for someone with Appellant’s physical needs. MassHealth asserted that its modification to 6 bladder care episodes per-day would result in a total of 12 toileting episodes within a 24-hour period, or once every two-hours, which was consistent with standard bladder training programs.

Appellant demonstrated that the modification to the frequency of bladder care episodes is insufficient to meet her needs. As noted by her PCM agency, Appellant is dependent for assistance with toilet hygiene, clothing management/realignment, changing of absorbent product, and toileting transfers. Id. She is “occasionally incontinent of urine requiring [PCA assistance related to] hygiene, clothing change and cleaning of [her] wheelchair.” Id. Appellant persuasively testified that the standard bladder training protocol is not an appropriate standard to hold her to given her age and medical condition. In conjunction with her testimony, Appellant submitted letters from her treating nephrologist and urologist, both of whom wrote

in support of the requested level of toileting assistance citing her long history of cerebral palsy with neurogenic bladder, impaired muscle and bladder function/sensation; history of kidney stones, and recurrent and multi-drug resistant UTIs and urolithiasis. See Exh. 6. To prevent the development of kidney stones, Appellant's nephrologist requires her to consume 100 oz of daily fluids to produce 2.5 liters of urine, which results in frequent urination. See id. Her urologist opined that with a reduction to toileting assistance, Appellant's "peri-pelvic and perianal hygiene will rapidly deteriorate, [making it a] virtual certainty that she will eventually develop severe UTI's and exacerbate her current baseline problems with kidney stones as well as increasing the likelihood of developing pressure sores." See id. Appellant persuasively testified that the PCM agency's request accurately reflects her need for toileting assistance which amounts to "slightly more often than once every two hours."

The appeal is APPROVED-in-part with respect to Appellant's request for bladder care at 10x8x7.

The appeal is DENIED-in-part with respect to Appellant's request for an additional 15 minutes per-week, as she testified that the need for such assistance would be reduced if there were to be an increase in frequency of bladder care episodes.

Other Healthcare Needs; in/out of pool

Based on the evidence presented, Appellant sufficiently demonstrated that her request for 30 minutes, 4x per week (30x1x4) for "other healthcare needs", i.e., assisting her in and out of the pool so she can perform aquatic based PROM exercises, is appropriate and within the scope of covered PCA services. MassHealth denied this request based on its determination that it sought assistance for a non-covered PCA service under 130 CMR 422.412(A), as well as the fact that MassHealth approved in-full her separate request for PROM exercises.

Prior to hearing, Appellant submitted a letter from her primary care physician in support of the requested amount of PCA services, which included her need to continue aquatic therapy to reduce swelling and spasticity. See Exh. 5. At hearing, Appellant clarified that the time requested under "other healthcare needs," is not to perform a separate type of therapy, but rather, to receive the necessary assistance with transfers and clothing management, so that she can perform the authorized PROM exercises in her pool, which she does four out of the seven days per-week she receives PROM assistance. Appellant provided detailed testimony regarding the difference in performing PROM exercises on "dry land" where her limbs "do not move" as opposed to performing PROM as aquatic therapy, which is "the only way" to keep her limbs from contracting and stiffening, and which helps maintain her strength. Appellant demonstrated that the request, which is to receive assistance with recognized ADLs, i.e., clothing management and transfers so that she can perform PROM exercises in water (as opposed to a less effective setting), is a covered PCA service and payable by MassHealth under 130 CMR 422.410 and 130 CMR 450.204(A).

Based on the foregoing, the appeal is APPROVED with respect to the request for “Other Healthcare needs” at 30x1x4.

Order for MassHealth

Remove aid pending. For the PA period beginning 5/27/2024 and ending 5/26/2025 approve the time for bladder care to 10x8x7 and approve the time requested for “other healthcare needs, i.e. in/out of pool” to 30x1x4.

MassHealth’s denial related to the additional request for bladder care at 15x1 is to remain in effect, consistent with its 4/10/24 notice.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

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

