

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2406801
Decision Date:	7/24/2024	Hearing Date:	06/05/2024
Hearing Officer:	Radha Tilva	Record Open to:	07/01/2024

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, Optum, licensed occupational therapist and clinical appeals reviewer



*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:	Denied	Issue:	PA – PCA hours
Decision Date:	7/24/2024	Hearing Date:	06/05/2024
MassHealth’s Rep.:	Robin Brown	Appellant’s Rep.:	Pro se
Hearing Location:	Quincy Harbor South	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 April 18, 2024, MassHealth modified appellant’s prior authorization (PA) request for personal care attendant (PCA) hours to 66 hours per week beginning April 18, 2024 through April 17, 2025 (Exhibit 1). The appellant filed this appeal in a timely manner on April 29, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification of a prior authorization (PA) request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified appellant’s PA request for PCA services from 72 hours per week to 66 hours per week beginning April 18, 2024 through April 17, 2025.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant’s PA request for PCA services to 66 hours per week.

Summary of Evidence

MassHealth was represented by an occupational therapist and clinical appeals reviewer. The MassHealth representative testified that there is no aid pending in this case, and that appellant is in his [REDACTED] with a diagnosis of quadriplegia, gout, back pain, urinary tract infection (UTI), history of kidney stones, and muscle spasticity. The MassHealth representative testified that MassHealth received a reevaluation for PCA services on April 12, 2024 for 72 hours per week of PCA services, which MassHealth modified on April 18, 2024 to 66 hours per week. The dates of service for this request are April 18, 2024 through April 17, 2024. The MassHealth representative testified that MassHealth made two modifications to the requested services.

The first modification was for PCA assistance with transfers into and out of the stander (Exhibit 6, p. 23). The PCM agency requested 15 minutes of assistance, 2 times a day, 7 days a week, and an additional 15 minutes, 2 times a day, 5 days a week (*id.*). MassHealth approved 15 minutes, 2 times a day, 7 days a week for in and out of the stander, but did not approve the second request of 15 minutes, 2 times a day, 5 days a week. The representative initially testified that she thought it might be a mistake by the PCM agency, but after hearing appellant's testimony that he uses the stander two times a day the representative stated that the standard of care is to use the stander only once a day. The MassHealth representative further testified that appellant should work on getting tolerance up to 30 minutes at a time; otherwise, he would not be getting any benefit, and she suggested that he go back to the physical therapist to help him build tolerance. The MassHealth representative stated that research shows that you shouldn't use stander at all if you cannot tolerate a full 30 minutes, and that there is no medical evidence to support that it helps with bowel regimen, but only with bone density and health.

The appellant appeared by telephone and testified that he uses the stander two times a day, as his body does not tolerate being in the stander for 30 minutes at a time. His back pain gets problematic, which is why he breaks it down into two 15-minute increments. The appellant stated that if he does any longer, he gets spasms and testified that the nurse from the PCM agency suggested he split the time up and do it twice a day with 8 hours in between standing sessions. The appellant did not agree with the MassHealth representative that he cannot do it two times a day, and stated that it helps him with spasticity, sores, and his bowel regimen.

The second modification that MassHealth made was for 15 minutes, 2 times a day, 7 days a week for assistance with transfers onto and off the reclining bike. MassHealth modified the time to 0 minutes, because exercise is not covered by the PCA program. The representative explained that MassHealth does not cover exercise and only covers passive range-of-motion exercises, and the use of a stander.¹

Appellant's physician submitted a letter dated May 6, 2024 in support of 72 hours of PCA help (Exhibit 5). The record was left open for appellant to submit medical evidence to support use of

¹ No time was requested by appellant's PCM agency for assistance with Passive Range-of-Motion exercises.

the stander twice a day; however, the MassHealth representative stated on July 1, 2024 that she had not received anything from the appellant (Exhibit 7).

Findings of Fact

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

1. MassHealth received a reevaluation for PCA services on April 12, 2024 for 72 hours per week of PCA services which was modified on April 18, 2024 to 66 hours per week.
2. Appellant is a male in his [REDACTED] with a diagnosis of quadriplegia, gout, back pain, UTI, history of kidney stones, and muscle spasticity.
3. The dates of service for this request are April 18, 2024 through April 17, 2024.
4. The first modification was for assistance with transfers into and out of the stander, for which the PCM agency requested 15 minutes, 2 times a day, 7 days a week and an additional 15 minutes, 2 times a day, 5 days a week. MassHealth approved the 15 minutes, 2 times a day, 7 days a week, but denied the second request for 15 minutes, 2 times a day, 5 days a week.
5. Medical literature supports that standard of care is to use the stander one time a day for greater than 30 minutes at time (Testimony).
6. The appellant cannot tolerate 30 minutes of standing at a time, and thus uses the stander two times a day for a shorter increment of approximately 15 minutes.
7. The second request was for assistance with transfers onto and off appellant's reclining bike, which was requested at 15 minutes, 2 times a day, 7 days a week. MassHealth denied this request in full as exercise is not covered by MassHealth other than through passive range of motion or the use of a stander.

Analysis and Conclusions of Law

PCA 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.

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):

(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.

When determining the number of hours of physical assistance needed for the PCA to perform instrumental activities of daily living (IADLs), such as meal preparation, 130 CMR 422.410(C) states the following:

(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.

MassHealth modified appellant's time requested for assistance with transfers onto and off his stander, and approved assistance for one time a day at 15 minutes, 2 times a day, 7 days a week. The second request for 15 minutes, 2 times a day, 5 days a week was denied. As outlined in 130 CMR 422.410(A)(1) MassHealth approves time for physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment, which in this case is a stander.

In accordance with 130 CMR 610.082(C)(3), the hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation. The Guidelines for Medical Necessity Determination for Standers states specifically and in relevant part the following:

Literature also demonstrates the amount of time required in therapeutic standing in order for the user to achieve a medical benefit. For improvement in high muscle tone, a user must be able to tolerate standing for a minimum of 30 minutes at a time once a day. Optimal benefit for improvement in or maintenance of bone mineralization and density requires page 2 guidelines for medical necessity determination for standers and power-assisted (dynamic) standing components for wheelchairs a standing time of 60 minutes per day. In order for the user to achieve these benefits, standing must be performed a minimum of five days per week. Evidence-based literature demonstrates that standing for periods of fewer than 30 minutes, multiple times per day does not produce a similar therapeutic benefit for muscle and bone health.

(see, MassHealth Guidelines for Medical Necessity Determinations for Standers and Power-Assisted (Dynamic) Standing Components for Wheelchairs, December 6, 2019). The Guidelines comport with the MassHealth representative's testimony and support that standing for less than 30 minutes, multiple times a day does not produce therapeutic benefit for muscle and bone health. Thus,

MassHealth made the correct determination when it denied the additional request of 15 minutes of assistance, 2 times a day, 5 days a week for transfers into and out of the stander.

With respect to the request for assistance with transfer on and off the reclining bike MassHealth also made the correct determination when it denied PCA time. A reclining bike, unlike a stander is not durable medical equipment and therefore does not fall under mobility under 422.410(A)(1). In addition, the request does not fall under any other ADL or IADL listed in the regulations and is therefore not a covered service.

Further, 130 CMR 422.412(A) specifically states that MassHealth does not cover under the PCA program 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 (emphasis added).

For these reasons, the appeal is DENIED.

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.

Radha Tilva
Hearing Officer
Board of Hearings

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