

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2407718
Decision Date:	8/5/2024	Hearing Date:	06/20/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen



*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:	Prior Authorization
Decision Date:	8/5/2024	Hearing Date:	06/20/2024
MassHealth's Rep.:	Kelly Rayen	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone	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 11, 2024, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant filed a timely appeal on May 14, 2024. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services pursuant to 130 CMR 422.000.

Summary of Evidence

The appellant is over the age of 65 and has a spinal cord injury following a motor vehicle accident. The appellant is paraplegic. Other medical history includes: osteomyelitis of the left femur; chronic urinary tract infections (UTIs); a suprapubic catheter; neurogenic bowel and bladder; decreased lung function; sleep apnea with CPAP; a history of Methicillin-Resistant Staphylococcus Aureus (MRSA) infections; Fournier's Gangrene in 2011; two left femur fractures; typhoid fever in 1989; [REDACTED] pulmonary embolism in July 2017; history of vertigo; [REDACTED] and a history of a body rash. At the time of the assessment, the appellant continued to have a [REDACTED] [REDACTED]. At the time of the assessment, the appellant had new wounds to the right heel and the back of the right ankle; was wearing Prevalon heel protection boots; and stated that the personal care attendant (PCA) performed all wound care. The appellant reported a May 2023 hospitalization for a right heel wound infection.

On April 3, 2024, MassHealth received a re-evaluation for prior authorization of personal care attendant (PCA) services. The appellant requested 84.75 day/evening hours each week. (Testimony; Exhibit 4). MassHealth modified this request and approved 74.5 day/evening hours each week. Dates of service are April 11, 2024 through April 10, 2025. MassHealth modified the time requested for 5 tasks.

The appellant requested 10 minutes, 10 times each day, 7 days each week for assistance with transfers. (Testimony; Exhibit 4). MassHealth modified this request and approved 10 minutes, 9 times each day, 7 days each week for assistance with transfers. The MassHealth representative testified that this modification was made as the time requested was longer than ordinarily required. The MassHealth representative noted that the appellant requires assistance with getting in and out of bed, on and off certain surfaces and in and out of the wheelchair. (Testimony; Exhibit 4). The MassHealth representative testified that the appellant also has transfers included in the time requested for toileting and bathing. (Testimony; Exhibit 4). The MassHealth representative testified that the appellant was provided 8 transfers last year noting that this decision provided the appellant with one additional transfer. The appellant did not agree with the agency adjusting the number of transfers to an odd number. The appellant testified that he tries to go out each day and requires transfers at least 6 or 7 times each day and a transfer to one location typically requires a return to the original location. This would require an even number of transfers leading to the request for 10 transfers.

The appellant requested 7 minutes each day for assistance with nail care. (Testimony; Exhibit 4). MassHealth modified this request and approved 5 minutes each week for nail care as the time requested was longer than ordinarily required to complete the task. The MassHealth representative testified that it is typical for an individual to receive weekly nailcare and the records presented to MassHealth did not indicate a reason for requiring daily nail care. (Testimony; Exhibit

4). The MassHealth representative noted that in the past the appellant was approved for 7 minutes each week for nail care. The re-evaluation from the PCM agency states that the appellant requires assistance with toenail trimming. (Exhibit 4). The appellant testified that he has infections on his feet and the PCA needs to check his feet each day. The MassHealth representative responded that such assessments are beyond the skill set of a PCA. The appellant responded that the PCA has been taught how to perform these assessments by the Visiting Nurses Association (VNA) and the appellant has been dismissed from receiving VNA services because the PCA can perform this and other tasks.

The appellant requested 10 minutes each day for “other” grooming tasks. (Testimony; Exhibit 4). MassHealth modified the time requested and approved 5 minutes each day for “other” grooming tasks. The re-evaluation from the PCM agency states that the appellant is dependent on the PCA for meticulous skin care which includes applying nystatin and barrier cream to [REDACTED] abdominal folds and [REDACTED] to the appellant’s decreased ability to bend and reach. (Exhibit 4). The notes indicate that the appellant fatigues easily and has a history of skin rashes requiring meticulous skin care. (Exhibit 4). The MassHealth representative noted that in the past the appellant was approved for 5 minutes of skincare each day. The appellant testified that he is getting older and weaker making it more difficult for him to participate in completing this task. The appellant testified that he has a history of rashes that require skin checks as well as the regular application of lotions and creams.

The appellant requested 30 minutes, 2 times each day for wound care. (Testimony; Exhibit 4). MassHealth denied all of the time requested as documents show that assistance is available from another treating source and the services involve skilled tasks making the request for duplicative services as well as one that does meet professionally recognized standards of care. A letter from the appellant’s physician states that the main change for the appellant is the [REDACTED] [REDACTED] which is managed by the [REDACTED] Wound Clinic. (Exhibit 4). The letter from the physician states that the appellant requires at least daily wound care to this site and the dressings take approximately 30-45 minutes to complete. (Exhibit 4). The letter states that the wound may require a second dressing during the day if the appellant has bowel incontinence. (Exhibit 4).

The records presented by MassHealth include a Home Health Certification and Plan of Care from the VNA Care Network with a certification period of February 15, 2024 to April 14, 2024. (Exhibit 4). The start of care with this organization was in 2023. (Exhibit 4). Records indicate that a skilled nurse will perform/teach patient/caregiver care for a pressure injury to the [REDACTED] and right upper leg as well as an injury to the left heel three times each week and as needed. (Exhibit 4). The PCA assists in gathering supplies and dressing for the appellant’s wound on the [REDACTED] to prevent further skin breakdown as well as new open wounds to the right heel and the back of the right ankle. The goals of the VNA Plan of Care include having the appellant demonstrate improved pressure injury status as evidenced by a decrease in size or drainage of the injury. (Exhibit 4). The VNA Plan of Care states that the need for intermittent skilled services is demonstrated by wound

care. (Exhibit 4).

The MassHealth representative testified that the VNA is not likely to discharge a member if wound care is still necessary. The MassHealth representative testified that the type of wound care required for the appellant requires a skilled level of service, as indicated in the VNA Plan of Care. The MassHealth representative testified that skilled services are beyond the role of a PCA. The MassHealth representative testified that a PCA can perform a simple dressing change but the stage of the appellant's wound and level of care necessary is not something covered by the PCA program as they are skilled tasks and having a PCA perform such tasks does not meet professionally recognized standards of care.

The appellant testified that he has had the same wound on his [REDACTED] for over one year. As noted above, the appellant has been hospitalized and/or received VNA services for that same period. The appellant testified that he was dismissed from the VNA and he now goes to a wound clinic. The appellant testified that the PCA performs wound care daily to his [REDACTED], right heel and left heel. The appellant testified that the depth of the wound on the left heel is deeper than superficial but is not at the level that would require a hospitalization. The appellant testified that the VNA comes to check but the PCA is the one performing the services.

The MassHealth representative responded that the VNA cannot delegate services to a PCA. A PCA does not have the skill set to accurately assess wounds and noted that the VNA certification period is for 6 months and as the records indicate, the appellant's plan of care was recertified on more than one occasion in the last year. The MassHealth representative was willing to authorize 10 minutes, 2 times each day, 7 days each week for basic wound care but noted that other skilled services are beyond the scope of the PCA program.

The appellant requested 95 minutes each day, 7 days each week for meal preparation for a total of 665 minutes each week. MassHealth modified this request and approved 90 minutes each day for a total of 630 minutes each week. The MassHealth representative testified that the appellant was approved for a total of 630 minutes each week last year. The appellant testified that his condition has declined making it more difficult for him to perform some of the tasks on his own so he needs more assistance from the PCA for meal preparation.

Findings of Fact

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

1. The appellant is over the age of 65 and has a spinal cord injury following a motor vehicle accident.
2. The appellant is paraplegic.

3. Other medical history includes: osteomyelitis of the left femur; chronic urinary tract infections (UTIs); a suprapubic catheter; neurogenic bowel and bladder; decreased lung function; sleep apnea with CPAP; a history of Methicillin-Resistant Staphylococcus Aureus (MRSA) infections; Fournier's Gangrene in 2011; two left femur fractures; typhoid fever in 1989; [REDACTED] 2017; pulmonary embolism in July 2017; history of vertigo; [REDACTED] and a history of a body rash.
4. At the time of the assessment, the appellant continued to have a [REDACTED] to the [REDACTED]
5. At the time of the assessment, the appellant had new wounds to the right heel and the back of the right ankle; was wearing Prevalon heel protection boots.
6. The appellant was hospitalized in May 2023 due to a right heel wound infection.
7. The appellant began receiving VNA services in 2023.
8. On April 3, 2024, MassHealth received a re-evaluation for prior authorization request for personal care attendant (PCA) services.
9. The appellant requested 84.75 day/evening hours each week.
10. MassHealth approved 74.5 day/evening hours each week.
11. Dates of service are April 11, 2024 through April 10, 2025.
12. The appellant requested 10 minutes, 10 times each day, 7 days each week for assistance with transfers.
13. MassHealth approved 10 minutes, 9 times each day, 7 days each week for assistance with transfers.
14. The appellant requires assistance with getting in and out of bed, on and off certain surfaces and in and out of the wheelchair.
15. The appellant has transfers included in the time requested for toileting and bathing.
16. The appellant was provided 8 transfers last year.
17. The appellant requires transfers at least 6 or 7 times each day.

18. A transfer to one location typically requires a return to the original location.
19. The appellant requested 7 minutes each day for assistance with nail care.
20. MassHealth approved 5 minutes each week for nail care.
21. In the past, the appellant was approved for 7 minutes each week for nail care.
22. The appellant requires assistance with toenail trimming.
23. The appellant requested 10 minutes each day for "other" grooming tasks.
24. MassHealth approved 5 minutes each day for "other" grooming tasks.
25. The appellant is dependent on the PCA for meticulous skin care which includes applying nystatin and barrier cream to [REDACTED] due to the appellant's decreased ability to bend and reach.
26. In the past, the appellant was approved for 5 minutes of skincare each day.
27. The appellant has grown weaker and now fatigues easily so cannot participate in completing skin care as he has done in the past.
28. The appellant requested 30 minutes, 2 times each day for wound care.
29. MassHealth denied all of the time requested.
30. The appellant has a [REDACTED] which is managed by the [REDACTED] Wound Clinic.
31. At the time of the assessment, the appellant was receiving services through the VNA with a certification period of February 15, 2024 to April 14, 2024.
32. The start of care with the VNA was in 2023.
33. The VNA Plan of Care includes having a skilled nurse perform/teach patient/caregiver care for a pressure injury to the right [REDACTED] and right upper leg as well as an injury to the left heel three times each week and as needed.
34. The goals of the VNA Plan of Care include having the appellant demonstrate improved pressure injury status as evidenced by a decrease in size or drainage of the injury.

35. The PCA to assists in gathering supplies and performing a dressing change for the appellant's wounds.
36. At hearing, MassHealth offered to authorize 10 minutes, 2 times each day, 7 days each week for basic wound care.
37. The appellant requested 95 minutes each day, 7 days each week for meal preparation for a total of 665 minutes each week.
38. MassHealth approved 90 minutes each day for meal preparation for a total of 630 minutes each week.
39. The appellant was approved for a total of 630 minutes each week last year.
40. The appellant's condition has declined making it more difficult for him to perform some of the tasks associated with meal preparation on his own.

Analysis and Conclusions of Law

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). 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 PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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. assistance with medications or other health related needs;
 - c. bathing/grooming;
 - d. dressing or undressing;
 - e. passive range-of-motion exercises;
 - f. eating; and
 - g. toileting.

(4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as “medically necessary” if 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. (130 CMR 450.204(A)). 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. (130 CMR 450.204(B)). A provider must make those records, including medical records, available to MassHealth upon request. (130 CMR 450.204(B)); 42 U.S.C. 1396a(a)(30), 42 CFR 440.230 and 440.260.)

Activities of daily living include physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment; (130 CMR 422.410(A)(1)). Records and testimony presented at hearing demonstrate that the appellant requires the time requested for transfers. As the appellant noted at hearing, a transfer to one location typically requires a return to the original location. This would require an even number of transfers leading to the request for 10 transfers rather than the 9 approved by MassHealth. As the records and testimony presented at hearing indicate that the time requested for assistance with transfers is medically necessary, the modification made by MassHealth was not correct. (130 CMR 422.410(A)(1); 130 CMR 450.204). This part of the appeal is approved.

Activities of daily living include physically assisting a member with bathing, personal hygiene, or grooming. (130 CMR 422.410(A)(3)). The decision made by MassHealth changing the time for nailcare to one time each week was correct as this is a task that is typically performed by a PCA weekly. Additionally, MassHealth approved weekly nailcare in the past and nothing was presented regarding a change to basic nailcare for the appellant. Instead, the appellant’s request was for the PCA to perform daily wound checks on the hands and feet. The basis for MassHealth’s decision denying daily time for the performance of the task by an untrained, non-skilled professional has substantial merit. The regulations specifically state that 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. (130 CMR 450.204(B)). The fact that the appellant appears to have recurring wounds and infections to the feet often requiring hospitalizations as well as a recurring need for nursing services, demonstrates that the appellant is vulnerable to infections and requires services of a quality that meet professionally recognized standards of care and the PCA’s performance of such tasks does not meet those standards.

Additionally, the regulations governing nursing services state that such services are those that must be provided by a registered nurse or a licensed practical nurse to be safe and effective, considering the inherent complexity of the service, the condition of the patient, and accepted standards of medical and nursing practice. (130 CMR 438.410(A)(1)). The regulations state that some services are nursing services based on complexity alone. (130 CMR 438.410(A)(2)). The testimony presented by both parties regarding the complexities in the appellant's care as well as the history of recurring wounds and hospitalizations related to infections demonstrates that the decision made by MassHealth in approving time for weekly nailcare alone was correct to ensure safe and appropriate treatment of any condition requiring wound care. (130 CMR 422.410(A)(3); 130 CMR 450.204)).

As the appellant had 7 minutes each week for nailcare approved in the past, it is not clear why MassHealth would reduce the number of minutes to 5 each week. Therefore, this part of the appeal is approved in part to authorize 7 minutes each week for nailcare.

MassHealth was not correct in modifying the time requested for "other" grooming tasks involving the application of lotions and creams. The appellant was approved for 5 minutes each day in the past for these tasks. The appellant's testimony regarding his increased dependence on the PCA to complete these tasks as well as the need to provided proper preventative care demonstrates that the time requested is medically necessary. (130 CMR 422.410(A)(3); 130 CMR 450.204). This part of the appeal is approved.

MassHealth was correct in their decision regarding wound care. The basis for MassHealth's decision regarding the performance of the task by an untrained, non-skilled professional has substantial merit. The regulations specifically state that 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. (130 CMR 450.204(B)). The fact that the appellant has recurring infections and a history of hospitalizations related to these infections indicates that services provided by a PCA are not of a quality that meet professionally recognized standards of health care. (130 CMR 450.204(B)). While the regulatory definition of activities of daily living includes assistance with medications or other health-related needs, the task is defined as physical assistance to take medications that would otherwise be self-administered. (130 CMR 422.410(A)(2)). Given the complexity and recurrence of the appellant's wounds, it does not appear that the appellant would be able to self-administer treatment for the wounds regardless of his current condition.

At the time of the re-evaluation, the appellant had a certification in place to receive wound care through the VNA. As the re-evaluation and records indicate that the PCA assists in gathering supplies and performing dressing changes, MassHealth was correct in offering 10 minutes, 2 times each day, 7 days each week for the PCA to perform basic wound care. This part of the appeal is approved in part to authorize the time proposed by MassHealth at hearing.

The MassHealth representative was also correct in noting that MassHealth does not cover medical services available from other MassHealth providers. (130 CMR 422.412(B)). As the agency had information regarding the appellant's receipt of such services through the VNA and the appellant testified to ongoing treatment at an outpatient facility, MassHealth was correct in denying time for services available through other, more appropriate, providers.

Instrumental activities of daily living include physically assisting a member with household management tasks that are incidental to the care of the member including: laundry, shopping, meal preparation and housekeeping. (130 CMR 422.401(B)(1)).

In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for instrumental activities of daily living (IADLs), the Personal Care Management (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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs. (130 CMR 422.410(C)).

MassHealth was not correct in their review of the appellant's individual circumstances in determining the number of hours of physical assistance that the appellant requires for meal preparation. While the appellant was approved for 90 minutes each day for assistance with meal preparation in the past, the testimony and evidence related to the decline in the appellant's condition over the past year indicate that this additional time is medically necessary. (130 CMR 422.410(C); 130 CMR 450.204). This part of the appeal is approved.

This appeal is approved in part and denied in part.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services to approve the following effective April 11, 2024:

- 10 minutes, 10 times each day, 7 days each week for assistance with transfers;
- 7 minutes each week for assistance with nail care;
- 10 minutes each day, 7 days each week for assistance with "other" grooming tasks

- or skincare;
- 10 minutes, 2 times each day, 7 days each week for assistance with basic wound care; and
- 95 minutes each week for assistance with meal preparation.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

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