

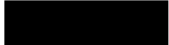
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part; Dismissed in Part	Appeal Number:	2409939
Decision Date:	09/10/2024	Hearing Date:	07/22/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown, OTR/L, for Optum

Interpreter:



*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; Personal Care Attendant Services
Decision Date:	09/10/2024	Hearing Date:	07/22/2024
MassHealth's Rep.:	Robin Brown, OTR/L	Appellant's Rep.:	Pro se
Hearing Location:	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 May 16, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on June 25, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's 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 attendant (PCA) services.

Issue

The appeal issue is whether MassHealth was acting within its discretion in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is a MassHealth member under the age of 65 and represented at hearing by his brother and PCA, who was assisted by an Arabic-speaking interpreter. MassHealth was represented by a clinical appeals reviewer and licensed occupational therapist for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from diagnoses of paraparesis (incomplete paralysis of lower extremities), epilepsy, lymphatic filariasis (abnormal enlargement of body parts), obesity, and cognitive impairments. On May 2, 2024, MassHealth received a prior authorization request on the appellant's behalf for initial implementation of services, requesting 52 hours of PCA assistance per week. On May 16, 2024, MassHealth modified the request and approved the appellant for 42 hours and 15 minutes of assistance with dates of service from May 16, 2024, to May 15, 2025.

Modifications were made in the areas of mobility transfers, repositioning, dressing and undressing, and medication assistance. After hearing, the parties agreed to the following modifications:

- **Dressing:** approved for 20 minutes per day, seven days per week;
- **Undressing:** approved for 15 minutes per day, seven days per week.

Thus, after hearing, disputes remained over assistance with mobility transfers, repositioning, and medication assistance.

Mobility Transfers

The appellant requested 10 minutes, 6 times per day, 7 days per week for assistance with transfers during the day and 10 minutes per night. The MassHealth representative reported that this was modified from 10 minutes per instance to 5, including the nighttime assistance, because the requested time is longer than typically required for someone with the appellant's needs. She testified that, having assisted with many transfers herself, typically the PCA helps the individual stand up, which can take 1-2 minutes, turn them, and sit them back down, which can take another 1-2 minutes. The appellant's representative reported that the appellant weighs approximately [REDACTED] pounds, that his bed is on the floor, and to get the appellant out of the bed the PCA must use his full force, which can take a long time. The MassHealth representative offered to increase the approved amount per instance from 5 minutes to 7 minutes. The appellant's brother rejected that offer and asked that the matter be taken under advisement.

Repositioning

The appellant requested 10 minutes, 6 times per day, 7 days per week for assistance with repositioning. The MassHealth representative reported that this was modified from 10 minutes to

3 minutes per instance, because the requested time is longer than typically required for someone with the appellant's needs. The appellant's representative reported that the appellant frequently asks to be moved into a different position and that sometimes the PCA lifts the appellants legs and repositions his body to make him more comfortable. He estimated that this takes approximately 3-5 minutes per instance, because the appellant frequently gets seizures that make the task difficult.

Medication Assistance

The appellant requested 10 minutes per week for assistance with prefill his prescription medication box. MassHealth modified this to 5 minutes per week, because the appellant has four medications listed, and MassHealth typically only approves one minute per prescription. The appellant's representative agreed that the appellant takes four different medications of varying doses, but he reported that it takes 10 minutes to prefill the box.

Findings of Fact

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

1. The appellant is an adult MassHealth member under the age of 65 who suffers from diagnoses of paraparesis (incomplete paralysis of lower extremities), epilepsy, lymphatic filariasis (abnormal enlargement of body parts), obesity, and cognitive impairments. Exhibit 4, Exhibit 5 at 11-12. The appellant did not receive PCA services prior to the notice at issue. Testimony.
2. On May 2, 2024, MassHealth received a prior authorization request on the appellant's behalf for renewal of services requesting 52 hours of PCA services per week. Testimony, Exhibit 5 at 35. On May 16, 2024, MassHealth modified the request and approved the appellant for 42 hours and 30 minutes of weekly assistance with dates of service from May 16, 2024, to May 15, 2025. Testimony, Exhibit 1, Exhibit 5 at 35.
3. The specific modifications were made in the areas of mobility transfers, repositioning, dressing and undressing, and medication assistance. Exhibit 1.
4. After hearing testimony, MassHealth and the appellant agreed to the following hours:
 - **Dressing:** approved for 20 minutes per day, 7 days per week;
 - **Undressing:** approved for 15 minutes per day, 7 days per week.

Testimony.

5. The appellant requested 10 minutes, 6 times per day, 7 days per week for assistance with transfers during the day and 10 minutes per night. MassHealth modified this request to 5 minutes per instance, and approved nighttime hours. At the hearing, MassHealth offered to increase that

amount to 7 minutes per instance. Exhibit 5 at 15, Testimony.

6. The appellant requested 10 minutes, 6 times per day, 7 days per week for assistance with repositioning. MassHealth modified this request to 3 minutes per instance. Exhibit 5 at 16, Testimony.

7. The appellant requested 10 minutes per week for assistance with prefilling his prescription medication box. MassHealth denied this request. Exhibit 5 at 30, Testimony.

9. The modifications were all made because the time requested exceeds the amount of assistance typically required for someone with the appellant's needs. Exhibit 1, Testimony.

10. The appellant weighs approximately [REDACTED]. His bed is on the floor, and his PCA must use all of his force to assist the appellant with getting out of and into bed and out of and into chairs. Testimony.

11. It typically takes the appellant's PCA 3-5 minutes to reposition him on multiple occasions throughout the day. Testimony.

12. The appellant takes four different medications of varying doses each day. Testimony.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...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(A)-(B).

As part of the PCA program, MassHealth does not cover certain activities, including, but not limited to "assistance provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members." 130 CMR 422.412(C) and (F).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for dressing and undressing, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant's approved hours to include the following:

- **Dressing:** approved for 20 minutes per day, 7 days per week;
- **Undressing:** approved for 15 minutes per day, 7 days per week.

Thus, at issue in this case is whether the appellant met his burden of proof in establishing medical necessity for more approved PCA time than MassHealth approved for assistance with mobility transfers, repositioning, and medication assistance.

Mobility Transfers

The definition for mobility can be found at 130 CMR 422.410(A)(1) and involves “physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment.” In this case, the appellant representative testified that the appellant’s weight combined with the location of his bed make transferring him into and out of that bed a very challenging task. While those circumstances could warrant a deviation from the standard of care, the appellant’s representative did not give a specific amount of time it takes, nor was any evidence presented as to why the 7 minutes per instance offered by MassHealth at hearing would be insufficient. As such, the appellant did not provide evidence that he requires 10 minutes per instance for this task. I impose MassHealth’s offer of 7 minutes, 6 times per day, 7 days per week for assistance with mobility transfers.² The appeal with respect to mobility is therefore approved in part and denied in part.

Repositioning

Repositioning is a subcategory of mobility and involves physically assisting members with moving parts of their body to a more comfortable position. In this case, the appellant’s representative testified that it takes approximately 3 to 5 minutes per instance to assist the appellant with repositioning. He reported that he must move the appellant’s legs around to find a more comfortable position, often on the couch. As 3 minutes per instance is the amount of time approved by MassHealth, the appellant provided no specific evidence that such an amount of time is insufficient. The appeal with respect to repositioning is therefore denied.

Medication Assistance

The appellant requested 10 minutes per week for assistance with prefilling his medication box. The MassHealth representative testified that the amount was modified to 5 minutes, as it typically correlates to one minute per the number of medications a member takes. The parties both agree that the appellant takes four different prescription or over the counter medications per day. The appellant’s representative’s conclusory assertions that it takes 10 minutes to prefill the appellant’s medication box lack credibility, and there is no specific evidence in the record that the appellant’s medications warrant more time to prefill than a typical individual with the appellant’s needs. The appeal with respect to medication assistance is therefore denied.

For the foregoing reasons, the appeal is dismissed with respect to dressing and undressing. With respect to mobility transfers, the appeal is hereby approved in part and denied in part. With respect to repositioning and medication assistance, the appeal is hereby denied.

² It is noted that the amount of time a member is approved for assistance during the nighttime hours is fixed at 14 hours per week, or two hours per night. Thus, although MassHealth did not technically approve the appellant’s nighttime hours as requested, he is approved for the same amount of nighttime hours he would be if his requested were approved in full. Thus, there is no need to order MassHealth to provide additional assistance at night.

Order for MassHealth

Modify the appellant's approved PCA hours to include the following assistance, retroactive to May 16, 2024:

- **Dressing:** 20 minutes per day, 7 days per week;
- **Undressing:** 15 minutes per day, 7 per week;
- **Mobility Transfers:** 7 minutes, 6 times per day, 7 days per week.

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.

Mariah Burns
Hearing Officer
Board of Hearings



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