

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2411873
Decision Date:	9/25/2024	Hearing Date:	08/30/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



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, PCA Services
Decision Date:	9/25/2024	Hearing Date:	08/30/2024
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 June 18, 2024, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant filed this appeal in a timely manner on August 1, 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. (130 CMR 422.000).

Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for personal care services.

Summary of Evidence

The appellant is over the age of [REDACTED] and under the age of [REDACTED]. The appellant has a primary diagnosis of schizophrenia. (Testimony; Exhibit 4). The appellant has behavioral issues including angry outbursts with some aggression towards objects and people, at times. (Testimony; Exhibit 4). The appellant lives with family members. (Testimony; Exhibit 4). The individual performing the re-evaluation for the Personal Care Management (PCM) agency noted that it was difficult to determine the appellant's responses to questions during the review as he is non-verbal, so unable to answer questions and make his needs known. (Exhibit 4). Prior to becoming non-verbal, at times the appellant was verbally inappropriate and used profanity. (Exhibit 4).

On June 7, 2024, the appellant underwent a re-evaluation for Personal Care Attendant (PCA) services. (Testimony; Exhibit 4). The appellant requested 69.75 day/evening hours each week. MassHealth modified this request and originally approved 59.75 hours each week. (Testimony; Exhibit 4). Prior to the hearing, MassHealth adjusted an error and approved 61 hours each week. MassHealth modified the time requested for 5 tasks. (Testimony; Exhibit 4).

The appellant requested 3 minutes, 6 times each day, 7 days each week for assistance with mobility. (Testimony; Exhibit 4). MassHealth modified this request and approved 1 minute, 6 times each day, 7 days each week for assistance with mobility. (Testimony; Exhibit 4). The MassHealth representative testified that the appellant did not receive time for assistance with mobility last year and the agency determined that the records did not accurately reflect a change that would require the amount of time requested this year. The records indicate that the appellant lacks purposeful movement through the home and must be physically assisted to ambulate through the home. (Exhibit 4). The appellant requires assistance to transfer from seated surfaces and in and out of bed. (Exhibit 4). The appellant is incontinent and requires ambulatory and toileting assistance at night. (Exhibit 4). The MassHealth representative noted that the agency approved the time requested for transfers.

The appellant's representative testified that the appellant will not get up or move at all on his own. The appellant's representative testified that the PCA needs to hold the appellant at all times to assist him with mobility to prevent falls and ensure that he moves. The appellant's representative testified that it takes more than one minute to move from one room to another as the appellant moves very slowly and needs constant assistance.

The appellant requested 25 minutes each day for assistance with dressing and 20 minutes each day for assistance with undressing. (Testimony; Exhibit 4). MassHealth modified this request and approved 20 minutes each day for assistance with dressing and 15 minutes each day for assistance with undressing. (Testimony; Exhibit 4). The MassHealth representative testified that the agency determined that the time requested was longer than what is ordinarily required to complete these tasks. The MassHealth representative noted that the records indicate that the appellant requires maximum assistance with these tasks and lacks self-care. (Testimony; Exhibit 4). The MassHealth representative testified that the same documentation was presented last year and the appellant

was approved for 20 minutes for dressing and 15 minutes for undressing. The MassHealth representative testified there was nothing presented to note a change in circumstances that would require additional time this year.

The appellant's representative testified that the appellant's doctor informed them that the appellant requires 24-hour care. The appellant's representative testified that the appellant is dressed more than one time each day due to incontinence. The appellant's representative testified that it takes approximately 10 minutes to get the appellant dressed and this task is done 4 or 5 times each day due to the appellant's incontinence as well as outbursts and trembling that can cause things to spill on him. The appellant's representative testified that the appellant is unable to complete any of these tasks on his own. The MassHealth representative testified that time for dressing and undressing due to incontinence was built into the time approved for bladder and bowel care.

The appellant requested 19 minutes, 6 times each day for assistance with bladder care. MassHealth modified this request and approved 15 minutes, 6 times each day for assistance with bladder care. The MassHealth representative noted that the records indicate that the appellant cannot perform any hygiene related tasks on his own. The appellant is incontinent. The MassHealth representative testified that the time approved was for undressing, changing the incontinence product and dressing. The appellant requested 19 minutes, 1 time each day, 7 days each week for assistance with bowel care and MassHealth approved the time requested.

The appellant's representative testified that the appellant needs to shower at times due to the incontinence. The appellant's representative testified that often the appellant showers 5 times each day. The appellant's representative testified that the appellant often utilizes 2 female pads in the brief and still has leaks that require clothing changes and showering. The MassHealth representative responded that the agency considered the appellant's incontinence in the time requested for bathing approving an additional 10 minutes, 1 time each day, 3 days each week for assistance with bathing due to incontinence as the records showed that the appellant requires an additional bath on average 3 times each week. (Testimony; Exhibit 4). MassHealth also approved the time requested for showering, 35 minutes each day, 7 days each week.

The appellant requested 20 minutes, 3 times each day, 7 days each week for assistance with eating meals and 15 minutes, 3 times each day, 7 days each week for assistance with eating snacks and consuming fluids. (Testimony; Exhibit 4). MassHealth modified this request and approved the time requested for meals and approved 5 minutes, 3 times each day, 7 days each week for assistance with fluids and snacks. (Testimony; Exhibit 4). The MassHealth representative noted that the records indicate that the appellant has problems with chewing. The MassHealth representative testified that the agency does not compensate for the time waiting for the appellant to chew.

The appellant's representative responded that the PCA needs to be sure that the appellant eats.

The appellant's representative testified that the PCA holds the food and feeds snacks directly to the appellant. Snacks include an apple, smoothie, chips or cookies and a drink.

Findings of Fact

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

1. The appellant is over the age of [REDACTED] and under the age of [REDACTED]
2. The appellant has a primary diagnosis of schizophrenia.
3. The appellant has behavioral issues including angry outbursts with some aggression towards objects and people, at times.
4. The appellant lives with family members.
5. The appellant is non-verbal.
6. Prior to becoming non-verbal, at times the appellant was verbally inappropriate and used profanity.
7. On June 7, 2024, the appellant underwent a re-evaluation for Personal Care Attendant (PCA) services.
8. The appellant requested 69.75 day/evening hours each week.
9. MassHealth modified this request and approved 61 hours each week.
10. The appellant requested 3 minutes, 6 times each day, 7 days each week for assistance with mobility.
11. MassHealth approved 1 minute, 6 times each day, 7 days each week for assistance with mobility.
12. The appellant did not receive time for assistance with mobility last year.
13. The appellant lacks purposeful movement through the home.
14. The appellant must be physically assisted to ambulate through the home.
15. The PCA physically assists the appellant in movement throughout the home.

16. The requires constant assistance with mobility to ensure that he continues with movement through the home.
17. The appellant requires assistance to transfer from seated surfaces and in and out of bed.
18. The appellant is incontinent and requires ambulatory and toileting assistance at night.
19. MassHealth approved the time requested for transfers.
20. The appellant requested 25 minutes each day, 7 days each week for assistance with dressing and 20 minutes each day, 7 days each week for assistance with undressing.
21. MassHealth approved 20 minutes each day for assistance with dressing and 15 minutes each day for assistance with undressing.
22. Records indicate that the appellant requires maximum assistance with dressing and undressing.
23. The appellant is dressed more than one time each day due to incontinence.
24. It takes approximately 10 minutes to get the appellant dressed and this task is done more than one time each day due to the appellant's incontinence as well as outbursts and trembling that can cause things to spill on him.
25. The appellant requested 19 minutes, 6 times each day for assistance with bladder care.
26. MassHealth approved 15 minutes, 6 times each day for assistance with bladder care.
27. The appellant cannot perform any hygiene related tasks on his own.
28. The time for bladder care included time for undressing, changing the incontinence product and dressing.
29. The appellant requested 19 minutes, 1 time each day, 7 days each week for assistance with bowel care and MassHealth approved the time requested.
30. MassHealth approved 10 minutes, 3 times each week for additional bathing due to the appellant's incontinence.
31. Records presented by the PCM agency indicate that the appellant requires an additional bath on average 3 times each week.

32. MassHealth also approved the time requested for showering, 35 minutes each day, 7 days each week.
33. The appellant requested 20 minutes, 3 times each day, 7 days each week for assistance with eating meals and 15 minutes, 3 times each day, 7 days each week for assistance with eating snacks and consuming fluids.
34. MassHealth approved the time requested for assistance with eating meals and approved 5 minutes, 3 times each day, 7 days each week for assistance with fluids and snacks.
35. The appellant has problems with chewing.
36. The PCA ensures that the appellant eats.
37. The PCA holds the food and feeds snacks directly to the appellant.
38. Snacks include an apple, smoothie, chips or cookies and a drink.

Analysis and Conclusions of Law

MassHealth covers PCA 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 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 necessary.

(130 CMR 422.403(C)).

Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL

- (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: 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 or bladder needs.

(130 CMR 422.410(A)).

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 substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

Activities of Daily Living (ADLs) 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 presented by MassHealth along with the testimony of the appellant’s representative demonstrate that the appellant requires physical assistance with mobility. Notes stating that the appellant lacks purposeful movement indicate that the appellant requires constant assistance and likely moves slowly through the house due to physical, mental and emotional impairments. The decision made by MassHealth modifying the time for mobility was not correct. This part of the appeal is approved.

Activities of daily living include physically assisting a member to dress or undress. (130 CMR 422.410(A)(4)). Records presented by MassHealth along with the testimony of the appellant’s representative demonstrate that the appellant requires the time requested for assistance with dressing and undressing (25 minutes each day, 7 days each week for dressing and 20 minutes each day, 7 days each week for undressing). The records state that the appellant requires maximum assistance and testimony regarding the number of times that the appellant requires assistance with these tasks due to incontinence and spills demonstrates that the time requested is necessary.

The decisions made by MassHealth modifying the time for dressing and undressing was not correct. This part of the appeal is approved.

Activities of daily living include physically assisting a member with bowel or bladder needs. (130 CMR 422.410(A)(7)). Records and testimony presented by the parties demonstrate that the decision made by MassHealth approving 15 minutes for bladder needs was correct. The appellant requested the same amount of time for bowel care (19 minutes) which typically takes longer and MassHealth approved additional time for bathing due to incontinence three days each week based on information provided by the PCM agency. This part of the appeal is denied.

Activities of daily living include physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs. (130 CMR 422.410(A)(6)). Records and testimony presented by the parties demonstrates that the decision made by MassHealth regarding the time approved for assistance with snacks was not correct. However, the time requested by the appellant does not seem appropriate either as the time requested for eating snacks was only 5 minutes less than eating a full meal. Based on testimony presented by the parties, the appellant is approved for 10 minutes, 3 times each day, 7 days each week for assistance with eating snacks. Both parties noted that the appellant has problems with chewing so needs additional time to complete the task of eating. Pursuant to 130 CMR 422.412(C), MassHealth does not cover assistance provided in the form of cueing, prompting, supervision, guiding, or coaching. Authorizing time for chewing food would be for a type of supervision and not physical assistance with eating. This part of the appeal is approved in part as the appeal representative demonstrated that more than 5 minutes was necessary for eating snacks but not the 15 minutes requested.

This appeal is approved in part and denied in part.

Order for MassHealth

Adjust the decision on appeal and approve the following:

- 3 minutes, 6 times each day, 7 days each week for assistance with mobility;
- 25 minutes each day, 7 days each week for assistance with dressing;
- 20 minutes each day, 7 days each week for assistance with undressing; and
- 10 minutes, 3 times each day, 7 days each week for assistance with eating snacks.

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

cc: [REDACTED]

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