

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part; Approved in part	Appeal Number:	2413152
Decision Date:	11/13/2024	Hearing Date:	09/27/2024
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

Pro se via telephone

Appearance for MassHealth:

Kelly Rayen RN (Optum) *via telephone*

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:	Dismissed in part; Denied in part; Approved in part	Issue:	Prior Authorization - Personal Care Attendant (PCA) Services
Decision Date:	11/13/2024	Hearing Date:	09/27/2024
MassHealth's Rep.:	Kelly Rayen RN	Appellant's Rep.:	<i>Pro se</i>
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 August 16, 2024, MassHealth approved the appellant's PA request for PCA services with modifications. (See 130 CMR 422.410(A)(3),(7), (B)(1),(4); 450.204(A)(1); and Exhibit (Ex.) 1; Ex. 6, pp. 3-5). The appellant filed this appeal in a timely manner on February 21, 2024. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request for PCA services is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's request for PCA services with modifications.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(3),(7), (B)(1),(4); 450.204(A)(1) in modifying the request for PCA services.

Summary of Evidence

MassHealth was represented by a registered nurse working as a clinical appeals reviewer for Optum, MassHealth's agent overseeing the Personal Care Attendant (PCA) program. The appellant represented herself with the assistance of an interpreter. All parties attended the hearing by telephone.

The MassHealth representative testified to the following. The appellant is an individual over the age of 65 years old. (Ex. 6, p. 6). The appellant has a primary diagnosis of osteoarthritis to both of her knees and her lower back. (Testimony; Ex. 6, p. 8). The appellant's other diagnoses include diabetes, anxiety, and depression. The appellant is status post gastric bypass from over 25 years ago. (Testimony; Ex. 6, p. 8). The appellant resides with her daughter and two of her grandchildren. (Testimony; Ex. 6, p. 8).

██████████ (the PCM agency) submitted a prior authorization reevaluation request for personal care attendant (PCA) services to MassHealth on August 14, 2024 for 41 hours and 45 minutes per week for one year. (Testimony; Ex. 1; Ex. 6, pp. 3-4). MassHealth notified the appellant on August 16, 2024 that it had modified this request and approved 37 hours and 30 minutes per week for dates of service from October 23, 2024, to October 22, 2025. (Testimony; Ex. 1; Ex. 6, pp. 3-4). Specifically, MassHealth modified the times requested for three activities of daily living (ADLs), evening quick wash, bladder care, and bowel care; and four instrumental activities of daily living (IADLs), laundry, housekeeping, shopping, and PCA assistance with PCA program paperwork. (Testimony; Ex. 1; Ex. 6, pp. 3-4).

During the course of the hearing, the parties resolved the modifications to bowel care and PCA assistance with PCA program paperwork. The appellant did not contest the modification MassHealth made to the time requested for bowel care. (Testimony; Ex. 6, p. 20). After considering the appellant's testimony, the MassHealth representative fully overturned the modification MassHealth made to the time requested for assistance with PCA program paperwork, and approved 15 minutes per week. (Testimony; Ex. 6, p. 32).

The following five modifications, however, remained in dispute at the end of the hearing:

1. Evening Quick Wash

The PCM agency requested 10 minutes per day, seven days a week for assistance with a quick wash. (Testimony; Ex. 6, pp. 14-15). In support of this request, the PCM agency wrote "[c]onsumer reported she can wash face, chest, personal area...Consumer needs assistance with quick wash, consumer reports incontinence d/t being unable to get to rest room at times and decrease in sensation[.]" (Ex. 6, p. 15). MassHealth denied the time requested in its entirety because "the time you requested for assistance with bathing or grooming is longer than ordinarily required for someone with your physical needs." (Ex. 1; Ex. 6, p. 4). The MassHealth

representative pointed out that the PCM agency stated that the need for a quick wash was due to increased incidents of incontinence. (Testimony; Ex. 6, p. 15). The MassHealth representative stated that since the request was due to episodes of incontinence, it was really assistance with hygiene, which is included as part of the time requested for toileting. (Testimony; Ex. 6, p. 20). The appellant confirmed that the need for the quick wash was due to her episodes of incontinence. (Testimony). The appellant, however, did not accept the MassHealth representative's explanation for the denial of time, stating that she needed the requested time. (Testimony).

2. Bladder Care

The PCM agency requested seven minutes, six times per day, seven days a week for assistance with bladder care. (Ex. 6, p. 20). In support of this request, the PCM agency wrote: "PC[A] to assist w/ transfer on/off toilet, d/t low height of toilet, PCA to assist with wiping/hygiene post B&B activity for thoroughness- consumer reports difficulty bending, reaching, reports low back pain/spasms, gets SOB w/ exertion, consumer with frequency/urgency. Increase in time so PCA can assist with changing liner d/t episodes of incontinence." (Ex. 6, p. 20). MassHealth modified the time to five minutes, six times per day, seven days per week "because the time you requested for assistance with toileting is longer than ordinarily required for someone with your physical needs." (Ex. 1; Ex. 6, p. 4). Repeating the PCM agency's statement, the MassHealth representative emphasized that the time requested was to assist with transfers, hygiene, and changing the liner in the appellant's underclothes. (Testimony). It did not include that time the appellant spent on the toilet voiding. (Testimony). The appellant stated that she needed increased time for assistance because of her increased incontinence and the need to remain hygienic. (Testimony).

3. Laundry

The PCM agency requested 75 minutes per week for PCA assistance with laundry. (Ex. 6, p. 30). The PCM agency wrote: "Laundry done at laundromat; consumer unable to bend, lift laundry basket, laundry excessive, extra clothing/linens d/t incontinence, frequency, urgency, not making in time for bathroom. Consumer can fold small items if seated. Increase time d/t increase of episodes of incontinence leading to more laundry." (Id.). MassHealth modified the time requested to 60 minutes per week stating: "the time you requested for assistance with household services is longer than ordinarily required for someone with your physical needs." (Ex. 1; Ex. 6, p. 4). The MassHealth representative stated that while the PCM agency states that the appellant takes her laundry to a laundromat, other documentation indicates that the appellant has laundry available to her in her residence. (Testimony; Ex. 6, p. 30). The MassHealth representative also emphasized that the PCM agency stated that the appellant could assist with laundry by folding small items if she was seated. (Id.). The appellant stated that she did not have laundry in her residence, and that the PCA has to take her laundry to a laundromat. (Testimony). In response to the MassHealth representative's question, the appellant stated that her laundry totaled one full load per week. (Testimony). The MassHealth representative emphasized that the time for laundry

did not include waiting while the laundry was in the washer or the dryer. (Testimony). The appellant stated that since her laundry was being washed in a public place and the PCA has to stay with the laundry to prevent it from being stolen, waiting should be compensated. (Testimony).

4. Housekeeping

The PCM agency requested 60 minutes per week for assistance with housekeeping stating the appellant was “dep[endent] for housekeeping w/[in] [her] personal space, bathroom and kitchen after...use, increase in time for changing linen[s] as [the appellant] has episodes of incontinence.” (Ex. 6, p. 30). MassHealth modified the request and approved 45 minutes per week stating “the time you requested for assistance with household services is longer than ordinarily required for someone with your physical needs.” (Ex. 1; Ex. 6, p. 4).

The MassHealth representative testified that the time for housekeeping is meant for light cleaning like sweeping, vacuuming, linen changes, and wiping of some surfaces. (Testimony). It does not include cleaning in the kitchen, which is included as part of meal preparation. (Testimony). MassHealth did approve the time the appellant requested for meal preparation in full. (Testimony; Ex. 6, p. 29). Since the appellant lives with her daughter and two grandchildren, the housekeeping is limited to spaces in the residence that are exclusively hers (like the appellant’s bedroom); shared spaces would involve shared housekeeping tasks. (Testimony). The appellant stated that she disagreed with MassHealth’s modification but did not provide further information to explain her position. (Testimony).

5. Shopping

The PCM agency requested 60 minutes per week for shopping stating “[the appellant] can make list of items needed [the appellant] does not drive and does not accompany to stores.” (Ex. 6, p. 31). MassHealth modified the time requested and approved 45 minutes per week stating, again, “the time you requested for assistance with household services is longer than ordinarily required for someone with your physical needs.” (Ex. 1; Ex. 6, p. 4). The MassHealth representative stated that last year the PCM agency requested and MassHealth approved 45 minutes per week for shopping. (Testimony). The MassHealth representative stated that the PCM agency’s statement regarding the appellant’s need for assistance with shopping was identical to that from last year. (Testimony). The PCM agency did not provide a justification for why an additional 15 minutes per week was necessary, since it appeared that nothing had changed since last year. (Testimony). The appellant also could not provide an explanation as to what changed from last year to this year to justify the need for 15 more minutes per week for assistance with shopping. (Testimony).

Findings of Fact

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

1. The appellant is over 65-years-old, resides with her daughter and two grandchildren; has diagnoses of osteoarthritis in both knees and her lower back, diabetes, anxiety, and depression; and is post-gastric bypass from over 25 years ago. (Testimony; Ex. 6, pp. 6, 8).
2. The PCM agency submitted a prior authorization reevaluation request for PCA services to MassHealth on August 14, 2024 for 41 hours and 45 minutes per week for one year. (Testimony; Ex. 1; Ex. 6, pp. 3-4).
3. In a notice dated August 16, 2024 , MassHealth informed the appellant that it had modified this request and approved 37 hours and 30 minutes per week for dates of service from October 23, 2024, to October 22, 2025. (Testimony; Ex. 1; Ex. 6, pp. 3-4).
4. Specifically, MassHealth modified the times requested for three ADLs and four IADLs. (Testimony; Ex. 1; Ex. 6, pp. 3-4).
5. Before the end of the hearing, two of the modifications were resolved:
 - A. The MassHealth representative overturned the modification to the time requested for assistance with PCA program paperwork, and approved 15 minutes per week. (Testimony; Ex. 6, p. 32); and
 - B. The appellant did not dispute the modification MassHealth made to the time requested for bowel care. (Testimony; Ex. 6, p. 20).
6. The following five modifications, however, remained in dispute by the end of the hearing:
 - A. Evening Quick Wash:
 1. The PCM agency requested 10 minutes of daily assistance with a quick wash, seven days a week, citing the consumer's report of being able to wash her face, chest, and personal area but needing help due to incontinence from inability to reach the restroom in time and a decrease in sensation. (Ex. 6, pp. 14-15).
 2. MassHealth denied the entire requested time for assistance with bathing or grooming, stating that it was longer than ordinarily needed for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).
 3. The time requested involves hygiene as result of the appellant's incontinence, which is covered by the time requested for toileting. (Testimony; Ex. 6, pp. 15, 20).
 - B. Bladder Care
 1. The PCM agency requested seven minutes, six times a day, seven days a week for bladder care assistance, citing the need for help with transfers to and from a low

toilet, hygiene after bowel and bladder activities due to the consumer's difficulty bending and reaching, low back pain, shortness of breath with exertion, frequency and urgency issues, and the necessity for additional time to assist with changing liners due to incontinence episodes. (Ex. 6, p. 20).

2. MassHealth modified the time to five minutes, six times per day, seven days per week because the time requested was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).
3. Time requested for assistance with bladder care did not include that time the appellant spent on the toilet voiding. (Testimony).
4. The appellant stated that she needed increased time for assistance because of her increased incontinence and the need to remain hygienic. (Testimony).

C. Laundry

1. The PCM agency requested 75 minutes per week for laundry assistance, noting that the consumer is unable to bend or lift the laundry basket due to excessive clothing and linens from incontinence issues, and while the consumer can fold small items while seated, additional time is needed to accommodate the increased episodes of incontinence leading to more laundry. (Ex. 6, p. 30).
2. MassHealth modified the time requested to 60 minutes per week because the time requested for assistance with household services was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).
3. The appellant does not have laundry in her residence and the PCA has to take her laundry to a laundromat. (Testimony).
4. The appellant's laundry consists of one large load per week. (Testimony).

D. Housekeeping

1. The PCM agency requested 60 minutes per week for housekeeping assistance, noting that the appellant is dependent on help in her personal space, bathroom, and kitchen, and needs additional time for changing linens due to incontinence episodes. (Ex. 6, p. 30).
2. MassHealth modified the request and approved 45 minutes per week for household services, stating that the requested time was longer than typically needed for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).
3. The approved time for housekeeping is designated for light cleaning tasks such as

sweeping, vacuuming, linen changes, and wiping surfaces, excluding kitchen cleaning, which is part of meal preparation. (Testimony).

4. MassHealth fully approved the time requested for meal preparation. (Testimony).
5. The housekeeping is limited to spaces in the residence that are exclusively hers (like the appellant's bedroom); any spaces shared with the three family members, would have shared housekeeping tasks. (Testimony).

E. Shopping

1. The PCM agency requested 60 minutes per week for shopping, noting that the appellant can make a list of needed items but does not drive or go to the stores. (Ex. 6, p. 31).
2. MassHealth modified the request and approved 45 minutes per week, stating that the time requested for household services was longer than typically needed for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4)
3. Last year, the PCM agency requested and MassHealth approved 45 minutes per week for shopping, and the MassHealth representative noted that the agency's statement regarding the appellant's need for assistance was identical to last year's, without providing justification for an additional 15 minutes per week, as it appeared nothing had changed. (Testimony).

Analysis and Conclusions of Law

MassHealth may make an adjustment in the matters at issue before or during an appeal period and if the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (130 CMR 610.051(B)). During the course of the hearing, the MassHealth representative overturned the modification to assistance with PCA program paperwork and approved 15 minutes per week as requested. As this adjustment resolves the dispute in favor of the appellant with regard to this IADL, the appeal is hereby DISMISSED.

BOH will also dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). At the hearing, the appellant stated that she did not object to MassHealth's modification to the time requested for bowel care. For that reason, the request for the hearing is hereby DISMISSED as to bowel care.

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the

medical necessity of the authorized service. (Id.). MassHealth covers activity time performed by a PCA in aiding with activities of daily living (ADLs) and Instrumental Activities of Daily Living. (130 CMR 422.411(A)). ADLs include certain specified activities that are fundamental to an individual's self-care and include physically assisting a member with bathing and bladder needs. (130 CMR 422.410(A)(3),(7)). IADLs are those specific activities that are instrumental but incidental to the care of the member's health and are performed by a PCA, including laundry, shopping, and housekeeping. (130 CMR 422.402; 422.410(B)(1)).

MassHealth does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if, amongst other things, 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)(1)).

A preponderance of the evidence does not show that there is a medical necessity for the time requested for an evening quick wash. The PCM agency requested 10 minutes per evening to assist the appellant with the quick wash in response to the fact that the appellant has had increased incontinence. MassHealth denied the requested time in its entirety stating that it was longer than ordinarily required for someone in the appellant's physical condition. The MassHealth representative explained that if the time requested was due to an increase in incontinence, it would be considered as part of toilet hygiene and should have been requested as part of bladder or bowel care.

With that in mind, a preponderance of the evidence does support the time the PCM agency requested for bladder care. The PCM agency requested seven minutes, six times per day for assistance with bladder care, explaining that there was "Increase in time so PCA can assist with changing liner d/t episodes of incontinence." MassHealth approved five minutes, six times per day stating that time requested was longer than ordinarily required for someone with your physical needs. The appellant stated that she needed the increased time for assistance because of her increased incontinence and the need to remain hygienic. It is felt that under the circumstances, two further minutes per episode for the purposes of hygiene is not unreasonable and is more likely than not medically necessary.

A preponderance of the evidence does not support the time the PCM agency requested for laundry, housekeeping, and shopping. In each case, MassHealth reduced the times requested for these IADLs by 15 minutes because the times requested were longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative pointed out that with regards to housekeeping and shopping MassHealth approved the appellant for the same amount of time as approved last year and that there was nothing in the documentation indicating a change from the previous year that would warrant the request for more time. In each instance, the appellant also could not describe the medical necessity for the extra fifteen minutes. Although

the appellant did state that her incontinence had increased, and that the PCA has to take the laundry off-site, she also stated that her total weekly laundry was one large load. It is felt that under the circumstances, the times approved for each of these IADLs is sufficient.

For the above reasons, the appeal is APPROVED with regard to the time requested for Bladder Care; DENIED with regard to the times requested for Quick Wash, Laundry, Housekeeping, and Shopping; and DISMISSED with regard to assistance with PCA Paperwork and Bowel Care.

Order for MassHealth

Modify the notice dated August 16, 2023 and approve the requested 15 minutes per week for assistance with PCA paperwork; as well as seven minutes, six times per day, seven days per week for bladder care.

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.

Scott Bernard
Hearing Officer
Board of Hearings

Cc:

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