

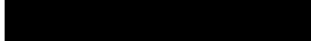
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Numbers:	2177238
Decision Date:	11/04/2021	Hearing Date:	10/25/2021
Hearing Officer:	Sara E. McGrath		

Appearance for Appellant:



Appearances for MassHealth:

Donna Burns, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Prior Authorization (PCA Services)
Decision Date:	11/04/2021	Hearing Date:	10/25/2021
MassHealth Rep:	Donna Burns, RN	Appellant Rep:	Pro se
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated August 23, 2021, MassHealth modified the appellant's request for an adjustment to his personal care attendant (PCA) services authorization (130 CMR 422.410; Exhibit 1). The appellant filed a timely appeal on September 17, 2021 (130 CMR 610.015(B)). Denial of a request for an adjustment to a PCA services authorization is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for an adjustment to his PCA services authorization.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a male in his 40s whose provider, Stavros Center for Independent Living, submitted a request for an increase to his current PCA services authorization on his behalf. The record reflects that the appellant has a primary diagnosis of transverse myelitis (Exhibit 3, p. 8). On August 10, 2021, MassHealth received a request for an adjustment to the appellant's current PCA services authorization. The appellant seeks PCA services in the amount of 65.75 day/evening hours per week and 14 night hours per week. On August 23, 2021, MassHealth modified the request and authorized 61.25 day/evening hours per week and 14 night hours per week.

MassHealth modified one category of the increase request – PCA assistance with medical transportation (Exhibit 1). MassHealth modified the requested transfer time (in and out of the home and in and out of the office), and modified the frequency of visits to one location. At hearing, the parties were able to resolve the issue of transfer time, and MassHealth reinstated the requested time (58 minutes in and out of the home, and 58 minutes in and out of the office). This portion of the appeal is therefore dismissed. The parties were unable to resolve the dispute regarding the time for PCA assistance with transportation to one location - the YMCA for water therapy (Exhibit 9).

In his request for an adjustment, the appellant requested an increase in the time authorized for PCA assistance with medical transportation – from 59 minutes per week to 393 minutes per week (Exhibit 3, p. 32; Exhibit 9). MassHealth modified the request to 122 minutes per week. Part of the appellant's request included 98 visits to the YMCA for water therapy. MassHealth modified that request and authorized PCA assistance with transportation to only 20 visits to the YMCA. The MassHealth consultant testified that these appointments are not medical appointments, but rather can be characterized as visits related to an exercise or social program. Further, water therapy is not a service that is reimbursable by MassHealth. For these reasons, MassHealth would not provide coverage for a PCA to accompany the appellant to this type of appointment. Here, because the request did not include any detailed information about the water therapy, MassHealth determined that the therapy might include a physical therapy component and thus authorized PCA assistance for transportation for 20 visits.¹ She added that after hearing the appellant's testimony, it is clear that there is no physical therapist present during his water therapy. Thus, MassHealth stands by its position that PCA assistance for transportation to these appointments should not be covered by MassHealth.²

The appellant testified telephonically and feels that PCA assistance to water therapy is a medical necessity for him. He explained that last year, MassHealth paid for his PCA to accompany him to these appointments five times per week (500 minutes per week). He testified that he is bed bound

¹ MassHealth explained that 20 visits are generally the maximum number of visits that may be authorized by MassHealth.

² MassHealth noted that despite this conclusion, it would not take away the authorization for PCA transport to 20 visits for this prior authorization period.

with a progressive disease, and aqua therapy is the only form of cardiovascular exercise he gets. This exercise is critical to maintaining his health in many ways. It helps with his heart and lung health, and assists with issues he has with pressure ulcers. Further, this therapy helps with his mental health – it gets him out of bed, out of the house, and socializing with other people. During short periods of time when he has gone without this therapy, he has experienced problems with his ears and with his vascular system. The appellant clarified that he attends aqua therapy five times per week, for a total of 260 visits per year, which is more than the 98 visits listed on the worksheet (Exhibit 9). The appellant stated that while a physical therapist is on site at the Y during his visits, the therapist does not participate in his water therapy.

The appellant submitted a letter dated September 23, 2021 from a provider who provides weekly psychotherapy for the appellant (Exhibit 4). She writes the following regarding the water therapy:

[The appellant] depends on regular aqua therapy, which he describes as the only thing that helps mitigate his deteriorating physical conditioning. Being in the pool is the only time he is pain free and helps to avoid skin breakdown associated with being bedridden. Swimming alleviates [the appellant's] stress and tension, provides endorphins, and provides hopefulness – all antidotes to depression and stress (Exhibit 4).

The appellant submitted letters from other providers in support of his appeal (Exhibits 4-8).

The MassHealth consultant responded and stated that last year's authorization was likely a MassHealth oversight.

Findings of Fact

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

1. The appellant is a male in his 40s with a primary diagnosis of transverse myelitis.
2. On August 10, 2021, MassHealth received a request for an increase to the appellant's current PCA services authorization.
3. The appellant seeks PCA services in the amount of 65.75 day/evening hours per week and 14 night hours per week.
4. On August 23, 2021, MassHealth modified the request and authorized 61.25 day/evening hours per week and 14 night hours per week.
5. MassHealth modified the category of PCA assistance with medical transportation; the appellant requested an increase in this category from 59 minutes per week to 393 minutes per week, and MassHealth modified the request to 122 minutes per week.

6. At hearing, the parties were able to resolve part of the disputed issue, but were unable to resolve the dispute regarding the time for PCA assistance with transportation to the YMCA for water therapy.
7. The appellant had requested PCA assistance with transportation to 98 visits to the YMCA for water therapy.
8. MassHealth modified this request and authorized PCA assistance with transportation to 20 visits to the YMCA for water therapy.
9. The appellant travels to the YMCA five times per week for water therapy.
10. A physical therapist does not participate in the appellant's water therapy.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care; (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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 or 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.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving personal care services; and
 - (c) other special needs approved by MassHealth as being instrumental to the health care of the member.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to [MassHealth]. . . .

The appellant disputes MassHealth’s modification of the time requested for PCA assistance with transportation to the YMCA for water therapy. MassHealth will pay for a PCA to accompany a member to a medical provider. (130 CMR 422.410(B)(3)). MassHealth persuasively argues that the appellant’s YMCA visits for water therapy do not constitute visits to a “medical provider.” While there is no doubt that the water therapy is beneficial to the appellant in all of the ways he described, the appellant has not demonstrated that a medical provider is involved. Water therapy is not included in MassHealth’s lists of covered services (130 CMR 450.105). Further, a physical therapist does not participate in this activity. As described, the water therapy visits are more akin to social or recreational services. The PCA program does not cover recreational or exercise services, and PCA assistance with transportation to these type of services is precluded by regulation (130 CMR 422.412(A); 422.410(B)(3)). The appellant has not met his burden and this portion of the appeal is denied.

The appellant has not demonstrated that MassHealth erred in its determination. The appeal is

dismissed in part and denied in part.

Order for MassHealth

Implement agreements made at hearing and terminate aid pending.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum