

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177487
Decision Date:	12/22/2021	Hearing Date:	11/04/2021
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Laura Rose, RN, Optum



*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:	Denied	Issue:	Personal Care Attendant
Decision Date:	12/22/2021	Hearing Date:	11/04/2021
MassHealth's Rep.:	Laura Rose, RN	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South	Aid Pending:	Yes

Authority

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

Jurisdiction¹

Through a notice dated 09/17/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 67:0 day/evening hours per week plus 2 daily night time attendant hours to 57:15 day/evening hours per week plus 2 daily night time attendant hours (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 09/27/2021 and she continues to receive aid at the last year's approval time pending the outcome of this appeal (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request for PCA services was received on appellant's behalf on 09/02/2021 from her PCA provider, Ad Lib, Inc., and is a re-evaluation request for the dates of service of 09/17/2021 to 09/16/2022. The appellant has a current authorization for 62:45 day/evening hours of PCA time per week plus 2 daily night time attendant hours that is in aid pending status pending this appeal. In the prior authorization request for PCA services, the provider requested a total of 67:00 day/evening hours of PCA time per week and 2 hours of daily night time attendant time. The appellant is in her 50's and she lives independently with her spouse and son. The primary diagnoses affecting her ability to function independently are multiple sclerosis, asthma, post-traumatic stress disorder, frequent falls, and lymphedema in her lower extremities (Exhibit 4).

The Optum representative testified that MassHealth modified the PCA request to 57:15 day/evening hours per week. MassHealth approved the night time attendant hours as requested. Modifications were made to the request for PCA services that include modifications in the activity of daily living (ADL) tasks of outside mobility, bathing, dressing, undressing, and toileting. Modifications were also made in the instrumental activities of daily living (IADL) tasks of assistance with laundry, shopping, housekeeping (Exhibits 1 and 4).

Outside Mobility

The appellant's PCA provider requested 20 minutes, 1 time per day, 7 days per week (20 X 1 X 7)² for assistance outside mobility. The provider noted that the appellant is totally dependent on assistance with mobility.

MassHealth denied the request for assistance with outside mobility. The MassHealth nurse testified that the appellant is a wheelchair and is able to maneuver it without assistance. She testified that the PCA time requested for outside mobility was not

² PCA time designated in this manner, (i.e., 20 X 1 X 7) denotes 20 minutes, 1 time per day, 7 times per week.

medically necessary.

The appellant testified that she is not able to get into her electric wheelchair independently. It takes two people to assist her in and out of the wheelchair – 1 to assist with the Hoyer lift and another in the back to help lift her up. She testified that it is difficult to put her in the wheelchair correctly and two people are needed. She also reports she does not leave the house, except for medical appointments.

The MassHealth representative testified that PCA time was provided for assistance to and from medical appointments and that would include time to assist the appellant in and out of her wheelchair.

Bathing

The appellant's PCA provider requested 40 X 1 X 1 for bathing and an additional 10 X 1 X 1 for a special transfer for bathing. MassHealth modified the request in this area to 40 X 1 X 1 for all bathing needs, including the transfer. After hearing from the appellant about her PCA needs with this task, MassHealth restored the time as requested.

Dressing/Undressing

The appellant's PCA provider requested 25 X 1 X 7 for dressing and 20 X 1 X 7 for undressing. MassHealth modified the request to 20 X 1 X 7 for dressing and 15 X 1 X 7 for undressing, making a determination that the PCA time requested was excessive for the appellant's documented needs. After hearing from the appellant about her PCA needs in this area, MassHealth restored in full the requested PCA time.

Toileting

The appellant's PCA provider requested 10 X 6 X 7 for bladder care, 10 X 2 X 7 for bowel care and 15 X 6 X 7 for special toileting transfers. The provider noted that the appellant needs total assistance with transfers on/off commode or bed using Hoyer lift, changing briefs as needed, commode for BM's. She is unable to stand, manage clothing or hygiene, due to decreased fine coordination and dexterity. She is incontinent of urine and is able to participate minimally to not at all with activities.

MassHealth modified the request to 20 X 8 X 7 for toileting, including transfers. The appellant agreed with this modification.

Transportation to Medical Appointments

The appellant's PCA provider requested 27 X 1 X 1 for assistance with transportation to medical appointments. MassHealth modified the request to 22 X 1 X 1; however, after hearing testimony from the appellant, MassHealth restored all time requested in this area.

Laundry, Shopping, Housekeeping, Meal Preparation/Clean-up

The appellant's PCA provider requested 70 X 1 X 7 for assistance with meal preparation and clean-up. MassHealth modified the request to 70 X 1 X 5, because the appellant's husband lives with her on the weekends and he would be required to assist the appellant.

The appellant's PCA provider requested 90 X 1 X 1 for laundry, 60 X 1 X 1 for shopping and 60 X 1 X 1 for housekeeping. MassHealth modified each to 45 X 1 X 1 because the appellant lives with her spouse who is legally responsible for assisting the appellant with instrumental activities of daily living. The MassHealth representative testified that the appellant's husband would be responsible for his own meal preparation and clean-up, laundry, shopping and housekeeping and there is no documented reason why he cannot incorporate some of the appellant's tasks into his own.

The appellant testified that her husband does not eat the same food that she eats. In addition, she has a son who has ADHD and autism. The appellant also stated that she likes her home to be spotless, so the PCA must spend more time cleaning. She testified her husband does pick up things when he shops, and he will do laundry and housekeeping. However, she needs the time requested for these tasks.

Findings of Fact

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 09/02/2021 from her PCA provider, Ad Lib, Inc., and it is a re-evaluation request for the dates of service of 09/17/2021 to 09/16/2022 (Testimony; Exhibit 4).
2. The appellant has a current authorization for 62:45 day/evening hours of PCA time per week plus 2 daily night time attendant hours that is in aid pending status pending this appeal (Testimony; Exhibit 4).
3. In the prior authorization request for PCA services, the provider requested a total of 67:00 day/evening hours of PCA time per week and 2 hours of daily night time attendant time (Testimony; Exhibit 4).
4. The appellant is in her 50's and she lives independently with her spouse and son. The primary diagnoses affecting her ability to function independently are multiple sclerosis, asthma, post-traumatic stress disorder, frequent falls, and lymphedema in her lower extremities (Testimony; Exhibit 4).
5. MassHealth modified the PCA request to 57:15 day/evening hours per week (Testimony; Exhibits 1 and 4).
6. MassHealth approved the night time attendant hours as requested (Testimony;

Exhibits 1 and 4).

7. MassHealth made ten modifications to the PA request, in the areas of assistance with outside mobility, bathing, dressing, undressing, toileting, meal preparation and clean-up, laundry, shopping, housekeeping and transportation to medical appointments (Testimony; Exhibits 1 and 4).
8. After hearing the appellant's testimony, MassHealth restored all time requested in the areas of bathing, dressing, undressing and transportation to medical appointments (Testimony; Exhibits 1 and 4).
9. The appellant's PCA provider requested 20 X 1 X 1 for assistance with outside mobility (Testimony; Exhibit 4).
10. The appellant does not leave the home except to travel to medical appointments (Testimony).
11. MassHealth denied the request for assistance with outside mobility (Testimony; Exhibits 1 and 4).
12. The appellant's PCA provider requested 10 X 6 X 7 for bladder care, 10 X 2 X 7 for bowel care and 15 X 6 X 7 for special toileting transfers (Testimony; Exhibits 1 and 4).
13. MassHealth modified the request for toileting to 20 X 8 X 7 for assistance with all toileting, including transfers (Testimony; Exhibits 1 and 4).
14. The appellant agreed with the modification for assistance with toileting (Testimony).
15. The appellant's PCA provider requested 70 X 1 X 7 for assistance with meal preparation and clean-up (Testimony; Exhibits 1 and 4).
16. MassHealth modified the request for assistance with meal preparation and clean-up to 70 X 1 X 5 (Testimony; Exhibits 1 and 4).
17. The appellant's husband lives away during the week and comes home on the weekends (Testimony).
18. The appellant's PCA provider requested 90 X 1 X 1 for laundry, 60 X 1 X 1 for shopping, and 60 X 1 X 1 for housekeeping (Testimony; Exhibits 1 and 4).
19. MassHealth modified the request for assistance with laundry, shopping and housekeeping to 45 X 1 X 1 each (Testimony; Exhibits 1 and 4).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "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, or 517.007 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

(A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;

(B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;

(C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;

(D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;

(E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;

(F) services provided by family members, as defined in 130 CMR 422.402; or

(G) surrogates, as defined in 130 CMR 422.402.

To qualify for services under the PCA program, the member must meet the conditions

defined at 130 CMR 422.403, below:

(C) 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 personal care services 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 following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

- (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/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 the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(Emphasis added.)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth modified the PCA request it received on behalf of the appellant from 67:00 day/evening hours to 57:15 day/evening hours. Two night time attendant hours daily were requested and approved. The appellant has a current authorization for 62:45 day/evening hours of PCA time per week plus 2 daily night time attendant hours that is in aid pending status pending this appeal.

MassHealth made ten modifications to the PA request, in the areas of assistance with outside mobility, bathing, dressing, undressing, toileting, meal preparation and clean-up, laundry, shopping, housekeeping and transportation to medical appointments. After hearing the appellant's testimony, MassHealth restored all time requested in the areas of bathing, dressing, undressing and transportation to medical appointments. As a result, this appeal is dismissed with regard to those modifications.

The appellant's PCA provider requested 20 X 1 X 1 for assistance with outside mobility. MassHealth denied the request for assistance with outside mobility. The appellant does not leave the home except to travel to medical appointments. MassHealth approved all time requested for assistance with travel to medical appointments. Therefore, this portion of the appeal is denied.

The appellant's PCA provider requested 10 X 6 X 7 for bladder care, 10 X 2 X 7 for bowel care and 15 X 6 X 7 for special toileting transfers. MassHealth modified the request for toileting to 20 X 8 X 7 for assistance with all toileting, including transfers. The appellant agreed with the modification for assistance with toileting. Accordingly, this portion of the appeal is denied.

The appellant's PCA provider requested 70 X 1 X 7 for assistance with meal preparation and clean-up. MassHealth modified the request for assistance with meal preparation and clean-up to 70 X 1 X 5. The appellant's PCA provider requested 90 X 1 X 1 for laundry, 60 X 1 X 1 for shopping, and 60 X 1 X 1 for housekeeping. MassHealth modified the request for assistance with laundry, shopping and housekeeping to 45 X 1 X 1 each, based on the fact the appellant's husband lives with her on weekends and should be able to incorporate her IADL needs into his to some extent. The appellant argued that she needs the time because she likes a tidy home and the PCA needs more time to clean, and that she eats different foods than her husband. By simply making those assertions, the appellant does not meet her burden of showing MassHealth's decision is incorrect. MassHealth approved some time for the appellant's individual needs outside of those that can be done by her husband. As a result, this portion of the appeal is denied.

For the foregoing reasons, this appeal is dismissed in part; denied in part.

Order for MassHealth

Release aid pending. Proceed with modifications of outside mobility (0 X 0 X 0), toileting (20 X 8 X 7), meal preparation and clean-up (70 X 1 X 5), laundry (45 X 1 X 1), shopping (45 X 1 X 1) and housekeeping (45 X 1 X 1).

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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