

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177491
Decision Date:	12/16/2021	Hearing Date:	11/04/2021
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary Jo Elliott, RN

Interpreter:
Spanish



*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:	12/16/2021	Hearing Date:	11/04/2021
MassHealth's Rep.:	Mary Jo Elliott, RN	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South		

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 09/15/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 8:30 day/evening hours per week to 6:45 day/evening hours per week (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 09/28/2021 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

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.

Action Taken by MassHealth

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 from her PCA provider, Tempus, Inc., and is an initial evaluation request for the dates of service of 09/16/2021 to 09/15/2022. In the prior authorization request for PCA services, the provider requested a total of 8:30 day/evening hours of PCA time per week. The appellant is ■ years of age and she lives independently. The primary diagnoses affecting her ability to function independently are osteoarthritis, chronic pain, fibromyalgia, and migraines (Exhibit 4).

The Optum representative testified that MassHealth modified the PCA request to 6:45 day/evening hours per week, making one modification in the area of bathing. The appellant's PCA provider requested 25 minutes, 1 time per day, 7 days per week for assistance with bathing. The provider wrote that the appellant needs assistance "in and out of the tub and to wash hard to reach areas." The appellant has been provided with a grab bar in the tub and a chair (Exhibit 4).

MassHealth modified this request to 10 minutes, 1 time per day, 7 days per week each for assistance bathing. The MassHealth representative testified that the time for assistance with bathing was modified because time is only approved for the PCA to assist the appellant, not the length of time of the activity. In this case, an occupational therapist (OT) included a report with the PA request. The OT reports that the appellant needs minimum assistance with bathing. She "is able to stand at the sink for a few minutes, sit on the side of the tub without assistance. She reports she needs assistance in/out of the tub to shower seat with back and someone helps her. She has the ability to wash her upper body, trunk, arms, peri area and legs down to the calf area." The MassHealth nurse explained that based on the documentation in the PA request, the appellant should need only 10 minutes of PCA assistance with bathing.

The appellant appeared at the fair hearing and testified with the assistance of a Spanish-

language interpreter. She testified that she cannot walk by herself and she needs assistance washing her “intimate parts,” shoulders, elbows, and wrists. The PCA washes the appellant’s head, full body, feet and legs. The appellant reports she is “very sick,” and needs assistance with everything, including cooking. She testified her PCA does it for her for free.

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 from her PCA provider, Tempus, Inc. and is an initial evaluation request for the dates of service of 09/16/2021 to 09/15/2022 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested a total of 8:30 day/evening hours of PCA time per week (Testimony; Exhibit 4).
3. The appellant is [REDACTED] years of age and she lives independently. The primary diagnoses affecting her ability to function independently are osteoarthritis, chronic pain, fibromyalgia, and migraines (Testimony; Exhibit 4).
4. MassHealth modified the PCA request to 6:45 day/evening hours per week (Testimony; Exhibits 1 and 4).
5. MassHealth made one modification to the PA request, in the area of assistance with bathing (Testimony; Exhibits 1 and 4).
6. The appellant’s PCA provider requested 25 minutes, 1 time per day, 7 days per week for assistance with bathing (Testimony; Exhibit 4).
7. MassHealth modified the request for assistance bathing to 10 minutes, 1 time per day, 7 days per week (Testimony; Exhibit 4).
8. The OT reports that the appellant needs minimum assistance with bathing. She “is able to stand at the sink for a few minutes, sit on the side of the tub without assistance. She reports she needs assistance in/out of the tub to shower seat with back and someone helps her. She has the ability to wash her upper body, trunk, arms, peri area and legs down to the calf area” (Testimony).

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.

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 8:30 day/evening hours to 6:45 day/evening hours. MassHealth made one modification in the area of assistance with bathing (25 minutes per day to 10 minutes per day). MassHealth based its decision primarily on the OT report submitted by the appellant's PCA provider with the PA request. According to the OT, the appellant needs minimum assistance with bathing. She "is able to stand at the sink for a few minutes, sit on the side of the tub without assistance. She reports she needs assistance in/out of the tub to shower seat with back and someone helps her. She has the ability to wash her upper body, trunk, arms, peri area and legs down to the calf area." MassHealth determined that, based on the appellant's functional ability as documented in the PA request, she requires 10 minutes of PCA assistance with bathing.

The appellant was concerned with overall time MassHealth approved for her PCA assistance. Her testimony was that she needs more assistance than is recorded in the OT report. She reports she needs assistance with tasks that are not addressed in the PA request². MassHealth's action is supported by the documentation in the hearing record. Accordingly, this appeal is denied.

Order for MassHealth

None.

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

² At the fair hearing, the MassHealth representative informed the appellant that if her condition has deteriorated since the PA request was submitted to MassHealth, she can request that her provider re-evaluate her needs for PCA assistance. If the provider determines that the appellant requires more PCA assistance than what was requested, it may submit the request to MassHealth for consideration.