

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200185
Decision Date:	4/08/2022	Hearing Date:	02/01/2022
Hearing Officer:	Casey Groff		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary-Jo Elliot, R.N., 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 Services
Decision Date:	4/08/2022	Hearing Date:	02/01/2022
MassHealth's Rep.:	Mary-Jo Elliot, R.N.	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Board of Hearings (Remote)	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 December 29, 2021, MassHealth informed Appellant that it was denying her request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant filed this appeal in a timely manner on January 10, 2022. See 130 CMR 610.015(B); Exhibit 2. Denial of a request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in denying Appellant's request for PCA services.

Summary of Evidence

At the hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Through testimony and documentary evidence, the MassHealth representative presented the following information: Appellant is a [REDACTED] female MassHealth member. See Exh. 5, p. 3. On December 15, 2021, a personal care management (PCM) agency submitted an initial prior authorization (PA) request to MassHealth on behalf of Appellant seeking 11.5 day/evening hours of PCA services per week for a period of one year. See Exh. 5, p. 30. On December 29, 2021, MassHealth denied her request for PCA services because it determined she did not have a disability that was “permanent or chronic in nature.” See id. at 5.

Pursuant to its initial evaluation of Appellant on December 13, 2021, the PCM agency noted that Appellant was (at the date of the evaluation) 16 weeks pregnant with an expected due date in June of 2022. Id. at 12. Appellant has a primary diagnosis of chronic back pain which began after she sustained a boxing injury in 2019. Id. at 11-12. Her additional relevant medical history included trigeminal neuralgia, low energy, bilateral food pain, bilateral leg swelling, and pelvic floor pain. Id. The PCM agency further noted that

[Appellant] reportedly needed assistance during her previous pregnancy from the 2nd trimester until about 9 months after her son was born [due to] her chronic back pain and the way the pregnancy exacerbated that pain. She is currently at 16 weeks pregnant and already needing assistance.

Id. at 8.

In assessing the level of PCA assistance needed to perform her activities of daily living (ADLs) and instrumental activities of daily living (IADLs), the PCM agency determined that Appellant required moderate assistance with lower-body bathing and dressing, and maximum assistance with grooming (shaving only) and meal preparation. Id. at 7-9. Accordingly, the request for 11.5 day/evening PCA hours per-week was based on the assessed time needed for the PCA to assist with these ADLs and IADLs, as well as medical appointment transportation. Id. Appellant was found to be independent with all other ADLs (mobility, toileting, eating, medication administration, and transfers). Id.

The MassHealth representative testified that among the numerous pre-requisites to participate in the PCA program, MassHealth requires that the applicant demonstrate, through documentation, that they have a permanent or chronic disability that impairs their ability to perform two-or-more ADLs on a daily basis. MassHealth determined, based on reviewing the documentation in the PA request, that Appellant’s level of impairment is dependent on her pregnancy status and is therefore temporary in nature. Although she is noted to have chronic back pain, the documentation indicates that this only limits her ability to perform ADLs when pregnant. There was no documentation to demonstrate that when not pregnant, or in a post-partum period, Appellant is unable to independently perform two-or-more ADLs. Accordingly, MassHealth denied the PA request.

Appellant appeared at the hearing by telephone and explained that when she reported her

symptoms to her primary care physician, she was advised to apply for PCA services. Appellant testified that she has experienced back pain since she was injured in July of 2019. It is a chronic condition, so she does not understand why this would not meet MassHealth's requirements. In her previous pregnancy, her pain was exacerbated in the 2nd half of her pregnancy and limited her ability to function. With this pregnancy, she was in significant pain much earlier, including at 16 weeks. Additionally, she now has to care of her 1.5 year-old son. Her spouse, whom she lives with, works from 4am to 6:30pm and is unable to assist her in this respect. Currently, she is unable to bend her knees. She needs help putting on socks and underwear. Everything hurts and is swollen.

Additionally, Appellant submitted into evidence, a letter dated November 17, 2021 signed by her chiropractor, Gary M. Gorman DC, CACAN, which explained, in relevant part, the following:

[Appellant] is a current patient of mine and is being treated for back pain. I treated her for a short period of time during her first pregnancy. When she returned for care, she explained to me how debilitated she was during the latter portion of her first pregnancy. She is concerned that it will happen again during this pregnancy and that she is responsible for her young son.

It is my professional opinion that she would physically benefit from the assistance of a personal care attendant to help her with her basic activities of daily living through the rest of her pregnancy.

See Exh. 3.

Findings of Fact

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

1. Appellant is a [REDACTED] MassHealth member.
2. On December 15, 2021, a personal care management (PCM) agency submitted an initial prior authorization (PA) request to MassHealth on behalf of Appellant seeking 11.5 day/evening hours of PCA services per week for a period of one year.
3. On December 29, 2021, MassHealth denied her request for PCA services because it determined she did not have a disability that was "permanent or chronic in nature."
4. Pursuant to its initial evaluation of Appellant on December 13, 2021, the PCM agency noted the following information: Appellant was (at the date of the evaluation) 16 weeks pregnant with an expected due date in June of 2022; has a primary diagnosis of chronic back pain; and relevant medical history of trigeminal neuralgia, low energy, bilateral foot pain, bilateral leg swelling, and pelvic floor pain.

5. In the PA request, the PCM agency noted that: “[Appellant] reportedly needed assistance during her previous pregnancy from the 2nd trimester until about 9 months after her son was born [due to] her chronic back pain and the way the pregnancy exacerbated that pain. She is currently at 16 weeks pregnant and already needing assistance.” Id. at 8.
6. In assessing the level of PCA assistance needed to perform her activities of daily living (ADLs) and instrumental activities of daily living (IADLs), the PCM agency determined that Appellant required moderate assistance with lower-body bathing and dressing, and maximum assistance with grooming (shaving only) and meal preparation.
7. Appellant’s chronic back pain was exacerbated during a previous pregnancy which impaired her ability to function during that time.
8. Appellant’s current pregnancy is again exacerbating her back pain and causing swelling, which limits her ability to bend at the knee and perform certain ADLs that involve use of the lower body/bending (i.e. dressing, bathing)
9. Appellant’s spouse works long hours away from the home and is unavailable to help during the day.
10. Appellant’s chiropractor signed a letter dated November 17, 2021 which explained, in relevant part, the following:

[Appellant] is a current patient of mine and is being treated for back pain. I treated her for a short period of time during her first pregnancy. When she returned for care, she explained to me how debilitated she was during the latter portion of her first pregnancy. She is concerned that it will happen again during this pregnancy and that she is responsible for her young son.

It is my professional opinion that she would physically benefit from the assistance of a personal care attendant to help her with her basic activities of daily living through the rest of her pregnancy. See Exh. 3.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:¹

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416 [which governs the prior authorization requirements].
- (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 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.²

See 130 CMR 422.403(C) (emphasis added).

In consideration of the evidence presented at hearing, Appellant did not sufficiently demonstrate that MassHealth erred in denying her request for PCA services. While the PA submission did indeed reflect that Appellant has chronic back pain, the overall evidence suggests that this condition only impairs her ability to independently perform ADLs when she is pregnant and/or in the postpartum period. For example, the PCM agency noted as a basis for its request, that Appellant

¹ PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.002.

² MassHealth, through its prior authorization process, determines whether a requested 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. See 130 CMR 450.204(A).

“reportedly needed assistance during her previous pregnancy from the 2nd trimester until about 9 months after her son was born [due to] her chronic back pain and the way the pregnancy exacerbated that pain.” See Exh. 5, p. 8. Additionally, Appellant’s chiropractor signed a letter, submitted into evidence, indicating that he treated Appellant “for a short period of time during her first pregnancy...” and that “she is concerned that it will happen again during this pregnancy....” See Exh. 3. While Appellant offered credible evidence that her back pain becomes worse during pregnancy, such evidence falls short meeting the criteria that her impairment is permanent or chronic. Rather, the evidence suggests that when not pregnant, Appellant is capable of independently performing her ADLs. Based on the foregoing regulations, MassHealth did not err in denying this prior authorization request. See 130 CMR 422.403(C).

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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