

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2201991
Decision Date:	5/10/2022	Hearing Date:	04/27/2022
Hearing Officer:	Radha Tilva		

Appearance for Appellant:

Pro se




Appearance for MassHealth:

Donna Burns, Optum Rep.



*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:	PA – PCA services
Decision Date:	5/10/2022	Hearing Date:	04/27/2022
MassHealth’s Rep.:	Donna Burns	Appellant’s Rep.:	
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.

Jurisdiction

Through a notice dated March 4, 2022, MassHealth denied the appellant's prior authorization request for personal care attendant services (Exhibit 1). The appellant filed this appeal in a timely manner on March 15, 2022 (see 130 CMR 610.015(B) and Exhibit 2). The appellant is in aid pending and receiving MassHealth covered services. Challenging a prior authorization request is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied March 4, 2022 MassHealth determined that appellant is ineligible for personal care attendant services

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.412(D), in determining that appellant’s is ineligible for personal care attendant services?

Summary of Evidence

The MassHealth representative that appeared at hearing testified that she is an R.N. and consultant for Optum, the agency that manages MassHealth's prior authorization requests for personal care attendant (herein "PCA") services. On February 22, 2022 MassHealth received a PCA re-evaluation by Independence Associates for 38 hours and 15 minutes of day/evening PCA services and 0 nighttime hours for dates of service March 27, 2022 through March 26, 2023. On March 4, 2022 MassHealth denied the request due to duplication of services. As the appellant timely appealed this request services remain in aid pending (MassHealth testimony).

The appellant is in his forties and has a primary diagnosis of traumatic brain injury (MassHealth testimony). He has been receiving PCA services from MassHealth. The representative explained that under 130 CMR 422.412(D) PCA services are non-covered for members of a group home. The MassHealth representative further explained that the regulations were amended in January 2022 and as appellant lives in a group home with four other people he is not eligible for PCA services.

The appellant was represented by his PCA surrogate and a Nurse Manager from the group home where he lives. The PCA surrogate and Nurse Manager testified to the following: appellant lives in a group home where Massachusetts Rehabilitation Commission (MRC) is the funding source. MRC pays for staffing and nursing. The group home provides 24-hour nursing in the home and has a 2 to 5 ratio of nurses to residents. The nurses assist with showering, feeding, food preparation, etc...The appellant is incontinent, has mobility issues and requires a hooyer lift. He is a 2 person assist as are others in the group home. The appellant likes companionship and enjoys personal care attendant (PCA) services. The PCA presently comes 4 days a week and also comes during the evening on the day that the appellant attends a day program to help him get into bed. The PCA makes it safer and provides appellant with a better quality of life.

Findings of Fact

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

1. On February 22, 2022 MassHealth received a PCA re-evaluation by Independence Associates for 38 hours and 15 minutes of day/evening PCA services and 0 nighttime hours for dates of service March 27, 2022 through March 26, 2023.
2. The appellant filed this appeal in a timely manner on March 15, 2022 (see 130 CMR 610.015(B) and Exhibit 2).
3. On March 4, 2022 MassHealth denied the request due to duplication of services.
4. The appellant is in his forties and has a primary diagnosis of traumatic brain injury.
5. The appellant lives in a group home that provides 24 hour nursing home care.
6. The appellant is presently also receiving PCA services in the group home as his services are in

aid pending.

7. The appellant is a two person assist and the nursing facility has a 2 to 5 nurse to resident ratio.

Analysis and Conclusions of Law

The dispute is whether MassHealth will cover PCA services for appellant. MassHealth contests that the appellant is ineligible as it is a duplication of service. The governing regulations are below:

422.412: Noncovered 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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;**
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

(Emphasis added).

130 CMR 450.204: Medical Necessity

- (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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits

(Emphasis added)

The appellant's representatives, which include both the program manager and nurse manager for the group home, do not dispute that appellant lives resides in a group home that is a residential facility subject to state licensure. As mentioned at hearing, 130 CMR 422.412(D) was revised to include "*a resident of a provider-operated residential facility subject to state licensure, such as a group home*" (Emphasis added). The regulation is unambiguous. PCA services are not provided to members in a group home. While it is understandable that a 2 to 5 ratio of nurses to residents may be inadequate at the group home to address all the resident's needs, MassHealth does not pay for duplicative services under 130 CMR 450.204(B).

Based on the above analysis 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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

