

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2203016
Decision Date:	6/29/2022	Hearing Date:	5/25/2022
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se, with [REDACTED], mother

Appearance for MassHealth:
Donna Burns, RN



*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:	PCA services
Decision Date:	6/29/2022	Hearing Date:	5/25/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Pro se, with mother
Hearing Location:	Quincy (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

By notice dated March 24, 2022, MassHealth denied Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on April 21, 2022. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for prior authorization of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.412 and 450.204, in denying Appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth at hearing and submitted records in support. Exhibit 4. Appellant appeared at hearing with her mother and submitted documents for hearing. Exhibit 5. A summary of testimony and documents follows. Appellant is in her early twenties diagnosed with a bipolar disorder, post-traumatic stress disorder (PTSD), adjustment disorder, anxiety, and depression. Appellant also has a blood disorder, history of kidney

stones, panic attacks, bilateral upper extremity tremors, night terrors, suicide attempt, and self-harming behaviors. Exhibit 4 at 10-12.

On March 14, 2022, Appellant's Personal Care Management Agency (PCMA), submitted an initial evaluation for PCA services on Appellant's behalf, requesting 12.25 day/evening hours and 14 night hours per week of PCA services. On March 24, 2022, MassHealth denied the request because the clinical record indicated that Appellant does not require physical assistance with two or more activities of daily living (ADLs). Exhibit 1.

Appellant's PCMA requested assistance for ADLs of bathing/grooming, dressing/undressing, and assistance with medications. Exhibit 4 at 15-22. Appellant's PCMA also requested assistance at night for management of panic attacks and night terrors. *Id.* at 23. Finally, the PCMA requested assistance with all of Appellant's instrumental activities of daily living (IADLs): meal preparation, laundry, shopping, and housekeeping. *Id.* at 26-28. The MassHealth representative testified that MassHealth's regulations do not cover PCA services for assistance provided in the form of cueing, prompting, supervision, guiding and/or coaching. Rather, MassHealth covers PCA services for hands-on care. The documentation submitted with this request stated that Appellant has lax initiation and must be cued to perform ADLs. For example, Appellant's PCMA requested 15 minutes daily of PCA time for assistance with bathing, writing that the PCA would assist to initiate the task of showering. Exhibit 4 at 16. The occupational therapist wrote that Appellant "requires constant cueing for initiation, attention and thoroughness for all self care tasks." *Id.* at 10. MassHealth denied Appellant's request for services because the services were not determined to be medically necessary, as Appellant did not meet the threshold requirement of physical assistance with at least two ADLs.

Appellant and her representative confirmed that Appellant is physically capable of performing her ADLs. However, when Appellant is in a depressive state in her bipolar disorder, she has no desire or drive or motivation to do any of the tasks. Appellant has no will to survive. Appellant has some physical limitations, as past medications have caused Appellant to experience tremors and tics. Most of the day-to-day care of Appellant is ensuring that Appellant gets her daily care done. Appellant's ailments also cause her to lie about having done her tasks, including taking her medication. Appellant also needs monitoring of her mental state for self-harm and suicide. Appellant's mental illness is debilitating.

Appellant has anxiety and attachment issues and has regressed with the pandemic. Appellant no longer leaves the house and spends most of her time in her room. Appellant has severe attachment issues and will not allow anyone but her mother to provide care. This has been exacerbated with the Covid-19 pandemic and federal health emergency. Appellant's mother cannot work and is performing services that should be covered by insurance. As a result, her family is suffering.

Appellant's psychiatric mental health nurse practitioner (PMHNP) wrote that in her clinical opinion, Appellant cannot complete ADLs without assistance and would benefit from PCA assistance. The PMHNP wrote that Appellant

has a long history of residing in group homes and many psychiatric hospitalizations

over the years. Most recently, while her mood has been mostly stable with currently prescribed medications, this still doesn't allow her to be able to complete adl's such as completing daily shopping requirements, preparing and taking her medications appropriately and consistently, cooking, and bathing when required. Her mother has long been her caregiver and is willing to work as patient's PCA at this time as the patient cannot complete adl's without assistance.

Exhibit 5. Appellant's therapist, a licensed medical health counselor, wrote:

[Appellant's] current clinical diagnoses include a primary diagnosis of bipolar I disorder, a secondary diagnosis of post-traumatic stress disorder, and a tertiary diagnosis of generalized anxiety disorder. Based on [Appellant's] current symptoms and clinical presentation, she would greatly benefit from PCA services. These services would also help [Appellant] to meet some of her current treatment goals.

Id.

Findings of Fact

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

1. On March 14, 2022, Appellant's PCMA submitted an initial evaluation for PCA services, requesting 12.25 day/evening hours and 14 night hours per week of PCA services on Appellant's behalf.
2. On March 24, 2022, MassHealth denied the request because the clinical record indicated that Appellant does not require physical assistance with two or more ADLs. Exhibit 1.
3. Appellant filed a timely appeal on April 21, 2022. Exhibit 2.
4. Appellant is in her early twenties diagnosed with a bipolar disorder, PTSD, adjustment disorder, anxiety, and depression. Appellant also has a blood disorder, history of kidney stones, panic attacks, bilateral upper extremity tremors, night terrors, suicide attempt, and self-harming behaviors. Exhibit 4 at 10-12.
5. Appellant's PCMA requested assistance for ADLs of bathing/grooming, dressing/undressing, and assistance with medications. Appellant's PCMA requested assistance for IADLs of meal preparation, laundry, shopping, and housekeeping. Exhibit 4 at 15-22, 26-28.
6. The occupational therapist wrote that Appellant "requires constant cueing for initiation, attention and thoroughness for all self care tasks." *Id.* at 10.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

Pursuant to 130 CMR 450.204(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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or 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 PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

Under 130 CMR 422.412(C), MassHealth does not cover as part of the PCA program “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.”

Here, MassHealth denied Appellant’s request because it determined Appellant does not require physical assistance with two or more ADLs. The undisputed evidence showed that Appellant does not require physical assistance with bathing, grooming, dressing, or medication assistance. Appellant requires assistance with cueing and supervision for most of her ADLs. However, this type of assistance is not covered as part of the PCA program.

Appellant is encouraged to explore the Adult Foster Care (AFC) program, as the services provided to members may include supervision and cueing of at least one ADL. *See* 130 CMR 408.416(B). Through the AFC program, care is provided “by a qualified AFC caregiver, as described in 130 CMR 408.434, who lives in the residence and who is selected, supervised, and paid by the AFC provider.” 130 CMR 408.415(A). Appellant’s mother could qualify to be Appellant’s AFC caregiver, as she does not meet the regulatory definition of a “family member” who is precluded from caregiver qualification. 130 CMR 408.434(B)(4); *see* 130 CMR 408.402 (defining a “family member” as “a spouse, parent of a minor member, including adoptive parent, or any legally responsible relative of the member”).¹

¹ Though not discussed at hearing, Appellant and her family may also want to explore the Home Care Assistance Program for individuals under the age of 60 offered by the Massachusetts Rehabilitation Commission (MRC):

As Appellant does not require physical assistance with two or more ADLs, MassHealth correctly determined that Appellant does not meet the regulatory requirements for PCA services. Accordingly, the 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

HCAP Case Managers determine eligibility, coordinate services and give you resources needed to live independently. Homemaking Services are provided either by an agency or by people you choose. Homemaking Services are defined as direct help with meal preparation, grocery shopping, medication pickup, laundry and light housekeeping (Dusting, vacuuming, mopping, kitchen clean-up, bathroom cleaning, bed changes, and trash removal ONLY).

<https://www.mass.gov/home-care-assistance-program-under-60> (last checked June 13, 2022).