

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: DENIED

Appeal Number: 2205460

Decision Date: 10/24/2022

Hearing Date: 09/09/2022

Hearing Officer: Kenneth Brodzinski

Appearance for Appellant:



Appearance for MassHealth:

Commonwealth Care Alliance
representatives – Cassandra Horne;
Christine Henderson, RN; Kaley Ann
Emory; Michelle Shepard and Hannah
Guskie.



*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:	Prior Authorization - PCA
Decision Date:	10/24/2022	Hearing Date:	09/09/2022
MassHealth's Rep.:	Cassandra Horne, CCA	Appellant's Rep.:	■
Hearing Location:	Quincy		

Authority

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

Jurisdiction

Through notice dated July 12, 2022, MassHealth's agent, Commonwealth Care Alliance (CCA) denied a Level I appeal of its earlier denial of Appellant's request for prior authorization for Personal Care Attendant (PCA) services (Exhibit A). Appellant filed for this appeal in a timely manner on July 22, 2022 (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth's agent CCA, denied a request for prior authorization for PCA services.

Issue

The appeal issue is whether CCA properly applied the controlling regulation(s) to accurate facts when it denied Appellant's request for prior authorization for PCA services.

Summary of Evidence

Both parties appeared by telephone.

MassHealth's agent, Commonwealth Care Alliance (CCA), submitted a packet of documents including a copy of a written PCA assessment (collectively, Exhibit B). Appellant did not file any documentation other than her Fair Hearing Request (Exhibit A).

The CCA representatives testified that Appellant filed a written request seeking prior authorization for personal care attendant (PCA) services which was denied. Appellant had a Level I internal appeal with CCA that was also denied. This matter is an appeal of the Level I denial.

The CCA representatives testified that after receiving the request for services, an in-home assessment was performed by a registered nurse and an occupational therapist who met in Appellant home with the Appellant and several family members including her adult son.

Through the in-home assessment, the CCA representatives learned that Appellant does not require any hands-on assistance with any activities of daily living (ADL). According to the CCA representatives, the assessing nurse and occupational therapist observed Appellant walking independently without the use of a device or assistance. They also observed Appellant independently getting into and out of her bed and climbing and descending stairs without any assistance. Appellant reported to the nurse and the occupational therapist that she was independent with all of her grooming including caring for her hair, dentures and nails, with both dressing and undressing and did not require any assistance with bladder or bowel care. The nurse and the occupational therapist witnessed Appellant demonstrating her ability to get on and off of the toilet and putting on and taking off her pull-ups without assistance. Appellant also reported that she is not incontinent of either bladder or bowel.

Appellant was represented by her adult son who testified that he has been Appellant PCA for over 10 years. According to the son, Appellant does need assistance going up and down the stairs. He testified that Appellant is unable to stand for very long on her legs and she is often unable to grab things. The son testified that Appellant has had arthritis in her hands and legs for the past 7 to 8 years. The son testified that he helps Appellant to ambulate in the home. He also testified that Appellant cannot reach the bathroom at night by herself and she often requires assistance being cleaned up after toileting.

Appellant's son acknowledged that he was present during the assessment. According to the son, during the assessment Appellant only walked to the bathroom and sat down and she did not demonstrate getting on and off her bed. The son also claimed that

Appellant is very hard of hearing and was simply saying yes to everything the reviewers were asking her.

In response, the CCA representatives testified that it was documented during the assessment that the nurse and occupational therapist observed Appellant walking to the bathroom, to the kitchen, and getting on and off both the toilet and bed. The written assessment also documented that Appellant did have difficulty hearing, but noted that she was wearing her hearing aids and Appellant was asked to repeat what was being asked of her with each question before answering. The CCA representatives also noted that the son was present during the assessment and he did not raise any concerns or dispute anything that Appellant said at that time.

Lastly, Appellant's son stated that Appellant has good days and bad days and needs assistance on her bad days. In response, the CCA representatives stated that in order to qualify for PCA services, a member must need hands-on assistance with at least two ADL's on a daily basis.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant filed a written request with MassHealth's agent, CCA, seeking prior authorization (PA) for personal care attendant (PCA) services.
2. CCA denied Appellant's PA request.
3. Appellant had a Level I internal appeal with CCA that was also denied.
4. Appellant appealed the Level I denial to this Board.
5. After receiving the request for services, CCA performed an in-home assessment.
6. The in-home assessment was performed by a registered nurse and an occupational therapist who met in Appellant home with the Appellant and several family members including Appellant's adult son.
7. Appellant's adult son has been serving as Appellant's PCA for over 10 years.
8. The assessing nurse and occupational therapist observed Appellant walking independently without the use of a device or assistance.
9. The assessing nurse and occupational therapist observed Appellant walking to the bathroom, to the kitchen, and getting on and off both the toilet and bed.

10. The assessing nurse and occupational therapist observed Appellant climbing and descending stairs without any assistance.
11. Appellant reported to the nurse and the occupational therapist that she was independent with all of her grooming including caring for her hair, dentures and nails, with both dressing and undressing and did not require any assistance with bladder or bowel care.
12. The nurse and the occupational therapist witnessed Appellant demonstrating her ability to get on and off of the toilet and putting on and taking off her pull-ups without assistance.
13. Appellant also reported that she is not incontinent of either bladder or bowel.
14. The written assessment documents that Appellant has difficulty hearing, that she was wearing her hearing aids.
15. Appellant was asked to let the assessors know if she did not understand their questions or wanted something repeated or explained (Exhibit B, page 53).
16. Appellant's adult son was present during the assessment and he did not raise any concerns or dispute anything that Appellant said at that time.

Analysis and Conclusions of Law

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (*Massachusetts Inst. of Tech. v. Department of Pub. Utils.*, 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

MassHealth regulation 130 CMR 422.403 in pertinent part states (emphasis added):

(C) MassHealth covers PCA 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 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.

130 CMR 422.410(A) defines ADL's as follows:

(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.*

Appellant has not met her burden insofar as she did not proffer any evidence to refute the findings of the PCA assessment. The assessment was performed by two appropriate medical professionals (a registered nurse and occupational therapist) who personally met with Appellant in her home and observed her performing all of her ADL's without assistance. These personal observations, as well as Appellant's own statements concerning her ability to perform her own ADL's independently, provide a rational basis for the assessment findings and CCA's determination to terminate PCA services.

During the hearing, Appellant's son/PCA explained that Appellant was simply saying yes to all of the assessors' questions due to her limited hearing. Yet, the son was present at the time of the assessment and offered no credible reason for why he did not correct Appellant if he thought she was not answering the questions properly. Additionally, the son's statement fails to address the fact that the assessors actually witnessed Appellant performing many of the ADL's independently.¹

¹ I do not agree with CCA's position that hands-on assistance must be needed on "daily" basis. While both terms, ADL's and IADL's, contain the term "Daily", both consist of activities that are not performed on a daily basis, such as showering, hair washing, nail care, shopping, laundry etc. I could find no regulation under 130 CMR 422 that establishes such a requirement.

For the foregoing reasons, the appeal is DENIED.

This decision does not prevent Appellant from seeking PCA services in the future if her functional status should worsen and she can demonstrate that she meets the program requirements.

Order for MassHealth/CCA

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: ICO Commonwealth Care Alliance, Attn: Cassandra Horne, 30 Winter Street, Boston, MA 02108