

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2206560

Decision Date: 12/9/2022

Hearing Date: 10/25/2022

Hearing Officer: Thomas Doyle

Record Open to:

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary Jo Elliot R.N.

Interpreter:



*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 hours
Decision Date:	12/9/2022	Hearing Date:	10/25/2022
MassHealth's Rep.:	Mary Jo Elliot R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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 August 23, 2022, MassHealth denied the appellant's prior authorization for PCA services. The appellant filed this appeal in a timely manner on August 29, 2022. (130 CMR 610.015(B); Ex. 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

Appellant represented herself and appeared via telephone. MassHealth was represented by an R.N. who appeared via telephone. She testified that MassHealth modified appellant's PCA services. Appellant is a female in his early 60's with a primary diagnosis of pulmonary fibrosis. Currently there is aid pending. On August 5, 2022, the provider, Tempus Unlimited, submitted a reevaluation request for 13 hours and 0 minutes of day/evening hours per week. On August 23, 2022, MassHealth modified the request because appellant did not meet program requirements, specifically

appellant did not require physical assistance with two or more activities of daily living.

There were several modifications. MassHealth modified bathing from 25 minutes, 1 time a day, 7 days a week to zero. Dressing was requested at 4 minutes an episode, 1 time a day, 7 days a week. MassHealth modified this request to zero. Undressing was requested at 2 minutes an episode, 1 time a day, 7 days a week. MassHealth modified this request to zero. Toileting was modified from a request of 5 minutes an episode, 1 episode a day, 7 days a week to MassHealth modifying this to zero time approved. MassHealth noted appellant was independent with mobility, grooming, eating, and assistance with medications.

Appellant testified on her own behalf. She stated the evaluators that came to her home were more interested in her black lab dog than in her. She said she did take off her sweater because she has movement from the waist up. She testified that the evaluator never saw her reach down into the dog food and that the dog food is in her bedroom and not the kitchen. Appellant testified she does not bathe herself; she doesn't use a commode and she doesn't remove her own briefs. She testified that the written comment that she reached for her ringing phone was an outright lie. She concluded her testimony by saying she can not do anything herself, she is a fall risk and is not sure why she was denied.

Findings of Fact

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

1. The appellant is a female in her early sixties who lives in the community. (Testimony; Ex. 5, p. 3).
2. The appellant's chronic condition is pulmonary fibrosis. (Ex. 5, p. 9).
3. Tempus Unlimited, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf on or about August 5, 2022, seeking 13 hours, 0 minutes of PCA assistance per week (day/evening hours). (Testimony; Ex. 5, p. 8-20).
4. By notice dated August 23, 2022, MassHealth modified the requested time to 0 hours, 0 minutes of day/evening PCA assistance per week, and 0 nighttime hours every night for services for one year, denying request for PCA services due to not meeting program criteria. (Testimony; Ex. 1, p. 3; Ex. 5, p. 8-20).
5. There is aid pending. (Ex. 4).
6. MassHealth modified bathing, dressing/undressing and toileting. (Testimony; Ex. 5, p. 6).
7. Appellant is independent in her level of assistance with mobility, grooming, eating and assistance with medications. (Ex. 5, pp. 10, 14, 16 and 18).

Analysis and Conclusions of Law

Appellant disagreed with the medically necessary decision of MassHealth in modifying her hours for PCA services. The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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. (**Emphasis added**).

(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. (**Emphasis added**).

422.403: Eligible Members

...

(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)**. (**Emphasis added**).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

MassHealth made modifications to appellant's prior authorization requests for the ADL's of bathing, dressing/undressing and toileting. (Ex. 5, p. 12, 15 and 17; Testimony).

Bathing:

MassHealth modified bathing from 25 minutes, 1 time a day, 7 days a week to zero because appellant reported she no longer takes a shower, (Ex. 5, 13), does not go into her claw foot tub anymore and sponge bathes sitting on the couch. (Ex. 5, p. 35). It was reported appellant has the functional ability to wash, rinse and dry most of her body and appellant was observed to be able to reach up and reach down. (Ex. 5, p. 13). As noted, appellant's level of assist for mobility is independent and her level of independence is independent, no device. (Ex. 5, p. 10). Appellant was observed on her couch, "bringing both legs up off the arm rest of the couch and holding her left leg up and brought it across and down over the side of the couch and then pushed herself up and sat on the couch without loss of balance or deficit observed." (Ex. 5, p. 35). Appellant was observed "standing from the couch."

(Id.) Appellant reported always washing her dog's ears which indicates flexibility of her fingers and ability to use them, which was confirmed by observation of appellant "using both arms and hands functionally throughout evaluation." (Id.).¹ Appellant having the use of her hands and the dexterity of her fingers plus the ability to sit on and get up from her couch, along with being independent in the ADL's of mobility and grooming, among the other ADL's, appellant has not met her burden on her request for hours for bathing.

Dressing/Undressing:

Appellant requested 4 minutes a day, 1 time a day for 7 days a week for dressing. She requested 2 minutes a day, 1 time a day for 7 days a week for undressing. MassHealth modified these requests to 0 time approved. (Ex. 5, p. 16). Appellant "is able to dress self/undress self." (Ex. 5, p. 16). Appellant was "observed remove (sic) right arm from sweater and put it back into sweater." (Id.). It was noted appellant "can participate in both upper and lower body dressing." (Id.). Added to these facts are the observations under bathing, which included, appellant being observed to be able to reach up and down; she is independent in her mobility; she can sit on her couch and move and raise her legs while on the couch and then stand from the couch; she has dexterity in her fingers and can use her hands and she was observed using both arms and hands functionally. There was no error in MassHealth denying the requested time for dressing and undressing. Tempus Unlimited, appellant's PCM provider, explicitly states appellant can dress self/undress self. (Ex. 5, p. 16). All the credible evidence, along with the fact no credible evidence was offered by appellant supporting her position, bolsters the conclusion MassHealth was correct in denying the request for time for dressing and undressing.

Toileting:

Toileting was modified from a request of 5 minutes an episode, 1 episode a day, 7 days a week to MassHealth approving 0 time for this task. (Ex. 5, p. 17). Tempus states the reason for requesting time for toileting was for assistance with changing the appellant's brief one time a day. (Ex. 5, p. 17). However, appellant can ambulate to and from the bathroom, sit on toilet and has ability to adjust clothing and remove soiled brief if needed. (Id.). Tempus observes appellant "appears to be independent with bladder and bowel/changes as needed." (Id.). Appellant told evaluators she uses her 3 in 1 commode at night. (Ex. 5, p. 35). Appellant is independent in her mobility and has use of her fingers, hands and legs, therefore, she would not need physical assistance with her bladder needs. (130 CMR 422.410 (A)(7)). Appellant has not met her burden of persuasion to show why time is needed for assistance with toileting.

In her testimony, appellant began by stating the evaluators were more interested in her black lab dog than her. She also makes multiple denials. She denies the ability to bathe herself. In contrast to what she told the evaluator, (Ex. 5, p. 35), she testified she does not use, or go on, the commode and she denies being able to remove her briefs herself. She denies her cell phone rang during the evaluation, (Id.), and testified that any assertion that it did ring was "an outright lie". (Testimony). Appellant did admit in her testimony that she did take her sweater off and that she has movement

¹ Appellant was observed "doffing her right sleeve on her sweater by pulling it with her left hand...and eventually put her right arm back into her sleeve." (Ex. 5, p. 35).

from her waist up. Appellant's denials of the ability to move about are not in accord with the observations of her ability to ambulate during the evaluation. Appellant's complaints of being in pain are not to be underestimated but the pain does not appear to inhibit her mobility.

The MassHealth representative testified that once the initial review/evaluation of appellant by Tempus was reviewed by Optum, they requested additional information because the documentation provided by Tempus did not comport with their observations of appellant's independence. As a result of this request, the Addendum was completed by Tempus. (Ex. 5, p. 35). Optum then reviewed the additional documentation and denied PCA services. Because of this denial, Optum requested Dr. Bahar Zadeh, an Optum physician, complete an additional review of appellant's case. The doctor agreed with Optum's denial. (Testimony). The doctor's additional review gives added weight to the analysis that denial of PCA services was appropriate.

Appellant has not met her burden as the evidence shows she does not require physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A). Therefore, it is unnecessary to analyze the incidental activities of daily living because appellant does not qualify for PCA services. (130 CMR 422.402 (C)(3)).

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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