

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2208555
Decision Date:	3/1/2023	Hearing Date:	12/22/2022
Hearing Officer:	Kimberly Scanlon	Record Open to:	1/12/2023

Appearance for Appellant:

Via telephone

Pro se

Appearance for MassHealth:

Via telephone

Donna Burns, R.N.



*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:	3/1/2023	Hearing Date:	12/22/2022
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Quincy Harbor South 1 (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 November 3, 2022, MassHealth denied the Appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services because MassHealth pays for certain services only when the service is medically necessary. (See, 130 CMR 450.204; Exhibit 1). The appellant filed this appeal in a timely manner on November 15, 2022. (See, 130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (See, 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's PA request for personal care services.

Issue

The appeal issue is whether MassHealth was correct in denying the Appellant's PA request for personal care services.

Summary of Evidence

The Appellant appeared and testified at the hearing by telephone. MassHealth was represented by a Registered Nurse who appeared at the hearing by telephone and testified as follows: The Appellant

is [REDACTED] with a primary diagnosis of rheumatoid arthritis with a right shoulder replacement. (Exhibit 5, p. 9). On October 17, 2022, the provider, Ethos, submitted an initial evaluation request for 28 hours and 50 minutes per week for day/evening hours and 0 hours per night. (Exhibit 5, pp. 31, 33). On November 3, 2022, MassHealth denied the request because it determined the Appellant's disability is not permanent or chronic in nature, per regulation. (Exhibit 1; Exhibit 5, pp. 4-6). The MassHealth representative explained that the documentation was completed just a few weeks after the Appellant's surgery which made it difficult for MassHealth to determine what the Appellant's chronic nature would become since the Appellant was still in the recovery phase following her shoulder replacement.

The Appellant testified that her orthopedic surgeon submitted a letter on her behalf. (Exhibit 5, pp. 41, 42). Further, the Appellant testified that her orthopedic surgeon stated to her recovery would take approximately one (1) year due to her shoulder. The Appellant testified that she needed assistance because she cannot bathe herself or perform any household tasks that she was able to do, prior to surgery. The Appellant testified that she began physical therapy, however, her doctor stated that it would take a year for her shoulder to heal. The Appellant affirmed that she never received assistance from a home health aide from the VNA nor did she attend rehabilitation after surgery. The Appellant testified that she went directly home after surgery and requires assistance. The Appellant's PCA is a close friend who prepares all of the Appellant's meals, bathes her, dresses her, performs household chores, gives the Appellant her medication and shops for the Appellant.

The MassHealth representative inquired whether the Appellant could obtain a letter from her orthopedic surgeon stating how long recovery would take so that MassHealth could review the request in further detail. Further, the MassHealth representative inquired as to the following: how many hours does the Appellant's PCA currently perform per week; whether the Appellant can take her own medication; how long does it take the PCA to assist the Appellant with mobility (i.e. to get out of a chair once sitting down); how long it takes the PCA to shower the Appellant; how long it takes the PCA to assist with nail care; how long it takes the PCA to dress the Appellant; whether the PCA assists with urination and bowel care; whether the PCA assists with meal preparation, shopping and medication distribution and how often does the PCA assist with laundry.

In response, the Appellant testified as follows: The PCA usually arrives at 9 a.m. each morning and stays until 5 p.m. or 7 p.m. each evening. Upon arrival she makes the Appellant breakfast and gives the Appellant her medication. The Appellant testified that she can take her own medication and fill her own pill box, however, she needs help with all other tasks. With respect to assisting with standing after sitting down, the Appellant testified that it takes the PCA probably about a minute or a minute and a half, she is not sure. As to showering, it probably takes the PCA 10 or 15 minutes, perhaps longer because the Appellant uses a shower chair. Further, the Appellant's PCA assists with nail care and lotion. The Appellant testified that it takes her PCA 5 to 10 minutes to dress her, depending upon what she is wearing, perhaps longer. As for urination and bowel care, the Appellant testified that her PCA assists with wiping herself. The Appellant testified that she cannot perform any meal preparation or shopping. Moreover, her PCA probably does 2 loads of laundry per week. The record was left open until January 12, 2023 for the Appellant to submit a letter from her orthopedic surgeon stating how long the Appellant's recovery will take. (See, Exhibit 6). At the close of business on or about January 3, 2023, the MassHealth representative responded that

MassHealth received said documentation on December 29, 2022, noting that the Appellant's orthopedic surgeon indicated that the Appellant will make a full recovery in 9-12 months and therefore MassHealth stands on the original denial. (See, Exhibit 6, pp. 2-3).

Findings of Fact

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

1. The Appellant is a [REDACTED] female with a primary diagnosis of rheumatoid arthritis with a right shoulder replacement. (Testimony; Exhibit 5, p. 9).
2. Ethos, a PCM agency, submitted an initial PA evaluation request to MassHealth on the Appellant's behalf on October 17, 2022 seeking 28 hours and 50 minutes per week for day/evening hours and 0 hours per night. (Testimony; Exhibit 5, pp. 31, 33).
3. By notice dated November 3, 2022, MassHealth denied the request because it determined the Appellant's disability is not permanent or chronic in nature, per regulation. (Testimony; Exhibit 1; Exhibit 5, pp. 4-6).
4. There is no aid pending. (Exhibit 4).
5. The Appellant did not receive assistance from a home health aide and did not attend rehabilitation after surgery. (Testimony).
6. The Appellant's orthopedic surgeon submitted a letter on behalf of the Appellant. (Testimony; Exhibit 5, pp. 41, 42).
7. Following the hearing, the record was left open until January 12, 2023 for the Appellant to submit an updated letter from her orthopedic surgeon, including the amount of time that the Appellant's recovery will take. (Exhibit 6).
8. At the close of business on or about January 3, 2023, the MassHealth representative responded that MassHealth received said documentation on December 29, 2022, noting that the Appellant's orthopedic surgeon stated in writing that the Appellant will make a full recovery in 9-12 months and therefore upheld the original denial for PCA assistance. (Exhibit 6, pp. 2-3).

Analysis and Conclusions of Law

MassHealth regulations regarding PCA services are found at 130 CMR 422.00 *et. seq.* Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member 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 or grooming; (d) dressing or

undressing; (e) range-of-motion exercises; (f) eating; (g) toileting; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Pursuant to 130 CMR 450.204, MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. 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 mental 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), or 517.007.

130 CMR 450.204(A).

In accordance with 130 CMR 450.204(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).

Further, 130 CMR 422.416(A) titled “Initial Request for Prior Authorization for PCA Services” states as follows:

With the exception of 130 CMR 422.416(D), PCM agencies must submit the initial request for prior authorization for PCA services to the MassHealth agency within 45 calendar days of the date of the initial inquiry about a member to the PCM agency for PCA services. Requests for prior authorization for PCA services must include:

- (1) the completed MassHealth Application for PCA Services and MassHealth Evaluation for PCA Services;
- (2) the completed MassHealth Prior Authorization Request form;
- (3) any documentation that supports the member’s need for PCA services. This documentation must:

- (a) identify a permanent or chronic disability that impairs the member's ability to perform ADLs and IADLs without physical assistance; and
- (b) state that the member requires physical assistance with two or more ADLs as defined in 130 CMR 422.410(A).

(4) the completed and signed assessment of the member's ability to manage the PCA program independently.

In the present case, the Appellant's orthopedic surgeon stated in writing that she will make a full recovery in 9-12 months. As a result, the Appellant's requested services are not considered to be a disability that is permanent or chronic in nature that impairs the functional ability to perform ADLs and IADLs without physical assistance. (See, 130 CMR 422.403(C)(2)).

Moreover, in accordance with 130 CMR 422.416(A)(3)(a), the Appellant's PA for PCA services did not include documentation that identified a permanent or chronic disability that impairs the member's ability to perform ADLs and IADLs without physical assistance.

Finally, pursuant to 130 CMR 450.204(A)(2), a service is considered to be "medically necessary" if 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 conversative or less costly to the MassHealth agency. The Appellant testified that she did not receive Home Health Aide services or rehabilitation following her surgery.

The MassHealth representative's testimony is persuasive and supported by documentary evidence. MassHealth's denial is justified and the Appellant, who has the burden, did not provide convincing evidence to support that her disability is permanent or chronic in nature nor that her request for PCA services is medically necessary in accordance with the regulations stated above. This appeal is DENIED.¹

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.

¹ This denial does not preclude the Appellant from obtaining Home Health Aide services or Elder Services as suggested at the hearing. Given the Appellant's need for assistance during her recovery phase, she is encouraged to do so.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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