

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|------------------|-----------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2209074 |
| Decision Date: | 3/6/2023 | Hearing Date: | 01/11/2023 |
| Hearing Officer: | Kimberly Scanlon | | |

Appearance for Appellant:

Via telephone

Pro se

Appearance for MassHealth:

Via telephone

Donna Burns, R.N.

Interpreter: Victor



*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

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|---------------------------|--------------------------|--------------------------|---------------------------|
| Appeal Decision: | Denied | Issue: | Prior Authorization - PCA |
| Decision Date: | 3/6/2023 | Hearing Date: | 01/11/2023 |
| MassHealth's Rep.: | Donna Burns | Appellant's Rep.: | Pro se |
| Hearing Location: | Quincy Harbor South 2 | 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 December 1, 2022, MassHealth modified the Appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services from the requested 27 hours and 0 minutes of day/evening hours per week to 25 hours and 0 minutes of day/evening hours of PCA assistance per week. (Exhibit 1).¹ The Appellant filed this appeal in a timely manner on December 7, 2022. (See, 130 CMR 610.015(B) and Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal. (See, 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's PA request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the Appellant's PA request for PCA services.

¹ The PCM agency also requested, and MassHealth authorized, 2 nighttime hours of PCA services for the Appellant every night.

Summary of Evidence

The Appellant appeared at the hearing and testified telephonically through an interpreter. MassHealth was represented by a Registered Nurse who appeared at the hearing telephonically and testified as follows: the Appellant is ■ years-old with a primary diagnosis of arthritis, asthma and neuropathy. (Exhibit 5, p. 8). On November 16, 2022, the provider, Ethos, submitted a re-evaluation request for 27 hours and 0 minutes per week for day/evening hours and 2 hours per night. (Exhibit 5, p. 3). On December 1, 2022, MassHealth modified the request to 25 hours and 0 minutes per week of day evening/hours and agreed with the 2 hours per night. (Exhibit 1, p. 2; Exhibit 5, pp. 3-6).

There were two (2) modifications. MassHealth modified meal preparation from the requested amount of 90 minutes daily, 7 days a week to 75 minutes daily, 7 days a week. (Exhibit 5, p. 22). The MassHealth representative testified that the requested amount of 90 minutes daily is longer than ordinarily required for meal preparation. The Appellant testified that she can microwave coffee and perhaps make a sandwich but she cannot stand for a lengthy amount of time due to a problem with her spinal cord and pain in her legs and hands. The Appellant further testified that she could make a sandwich for breakfast because she does not eat lunch.

As to the second modification, MassHealth modified the provider's request of 90 minutes per week for shopping to 75 minutes per week. (Exhibit 5, p. 24). The MassHealth representative made inquiry at the hearing as to whether the Appellant attends shopping with her PCA. In response, the Appellant testified that her son in-law mostly assists her with shopping, medical appointments and cleaning. The Appellant further testified that her son in-law is not paid as her PCA.

Findings of Fact

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

1. The Appellant is ■ years-old with medical diagnoses that include arthritis, asthma and neuropathy. (Testimony; Exhibit 5, p. 8).
2. Ethos, a PCM agency, submitted a PA re-evaluation request to MassHealth on the Appellant's behalf on November 16, 2022 seeking 27 hours and 0 minutes per week for day/evening hours and 2 hours per night. (Testimony; Exhibit 5, p. 3).
3. By notice dated December 1, 2022, MassHealth modified the requested time to 25 hours and 0 minutes per week for day/evening hours and 2 hours per night. (Exhibit 1, p. 2; Exhibit 5, pp. 3-6).
4. The Appellant is currently in aid pending. (Exhibit 3).
5. MassHealth modified meal preparation from 90 minutes per day, 7 days a week to 75 minutes daily, 7 days a week. (Testimony; Exhibit 5, p. 22).

6. The Appellant is able to assist at making herself a sandwich or heating up coffee, so long as she is not standing for too long. (Testimony).
7. MassHealth modified shopping from 90 minutes per week to 75 minutes per week. (Testimony; Exhibit 5, p. 22).
8. The Appellant's son in-law assists the Appellant with shopping. (Testimony).

Analysis and Conclusions of Law

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 of 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 quality that meets professionally recognized standards of 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. 1396(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 the 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 medication 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.

(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.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM agency must assume the following:

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
- (2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(130 CMR 422.410).

MassHealth made two (2) modifications to the Appellant's PA request. Specifically, MassHealth modified: (1) meal preparation and (2) shopping.

With respect to the modification of meal preparation from 90 minutes per day, 7 days a week to 75 minutes per day, 7 days a week, the MassHealth nurse testified that the time requested for meal preparation is longer than ordinarily required. Upon inquiry, the Appellant testified that she is able to assist in microwaving coffee and/or making a sandwich for breakfast since she does not eat lunch.

As to the modification of shopping from 90 minutes per week to 75 minutes per week, the MassHealth representative made inquiry as to whether the Appellant attends shopping with her PCA. In response, the Appellant testified that her son in-law mostly takes her shopping and takes her to her doctor's appointments.

The MassHealth representative's testimony is persuasive and supported by documentary evidence. MassHealth's modifications are justified and the Appellant, who has the burden, did not provide convincing evidence to support that it takes longer than 75 minutes per day, 7 days per week for meal preparation, nor that it takes longer than 75 minutes per week for shopping. Indeed, the Appellant testified that she does not eat lunch and could assist at making herself breakfast. Moreover, the Appellant testified that it is her son in-law, not her PCA, who mostly assists with shopping. For these reasons, this appeal is denied.

Order for MassHealth

Rescind aid pending. If MassHealth has not already done so, send notice to the Appellant authorizing her for 25 hours of day/evening PCA assistance per week and 2 nighttime hours per night for the PA period December 8, 2022 through December 7, 2023.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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