

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2300395
Decision Date:	3/6/2023	Hearing Date:	02/13/2023
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:



Appearances for MassHealth:

Mary Jo Elliott, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Prior Authorization for PCA Services
Decision Date:	3/6/2023	Hearing Date:	02/13/2023
MassHealth's Rep.:	Mary Jo Elliott, RN	Appellant's Rep.:	Pro se
Hearing Location:	Board of Hearings, Quincy		

Authority

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

Jurisdiction

Through a notice dated December 22, 2022, MassHealth denied the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on January 17, 2023 (130 CMR 610.015(B); Exhibit 2). Denial of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)).

Action Taken by MassHealth

MassHealth denied the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant qualifies for PCA services under MassHealth regulations.

Summary of Evidence

The MassHealth representative, who is a registered nurse, appeared at the hearing by phone and testified to the following factual background: The appellant is a female in her 40s with diagnoses that include fibromyalgia, post-traumatic stress disorder, borderline personality disorder, anxiety, depression, radiculopathy, and a discectomy and fusion in 2013. The nurse evaluator included the following in the medical history summary:

[R]eports multiple surgeries on both hands. Reports middle finger on right hand will lock up at times, reports she is having another surgery on hands in a couple of weeks. Reports “no feeling in hands and hands feel like pins and needles.” Reports recently DX with Raynaud’s and Parathyroidism and that she is perimenopausal having hot flashes frequently. Consumer presented very differently today than she did last year when nurse came to home. RN rang bell and consumer came down flight of stairs, unlocked door and let RN in. While walking back up stairs with phone in her hand she turned around to RN and said, “he is not feeling well.” RN let her know that I was here to see her. She thought I was out to see spouse who also has applied for the PCA program. Consumer then let RN know that today was a good day. She said yesterday was not a good day and she had spent the day in bed. Reports she has stretches of bad days when she can not get out of bed. Reports no recent overnight hospitalizations. Consumer texted RN to let her know she will be having emergency trigger finger surgery on 12/9 on right hand middle finger.

(Exhibit 3, pp. 8-9).

On December 12, 2022, MassHealth received a reevaluation and prior authorization (PA) request for PCA services for the appellant in the amount of 7 day/evening hours per week.¹ Assistance was requested for three activities of daily living (showering, general grooming, and dressing/undressing), and for four instrumental activities of daily living (meal preparation, laundry, housekeeping, and shopping) (Exhibit 3, pp. 10-26).

The PCA evaluation indicates that the appellant requires assistance with the activities of daily living listed below, and includes the following comments:

- Bathing (10 minutes per day for minimum assist): “Physical assist with showering activity, including routine transfers.”

Comments: “Consumer reports that she has a transfer tub bench – it was not in bathroom. Also showed RN new bar that was in box in kitchen that needs to be installed in tub. Reports she can sit on transfer tub bench and then needs A to get in. Reports M-F mother will stand in bathroom with her when she bathes and will let her know if she

¹ The MassHealth representative testified that the appellant had been most recently authorized to receive PCA services in the amount of 25 day/evening and 14 night hours per week.

misses ant areas and will assist her. Reports PCA A with bathing on the weekends. Consumer has functional ability to bathe self.”

- Grooming:
 - Nail Care (5 minutes per week)
 - Hair (2 minutes per day)
 - Shaving (5 minutes per week)

Comments: “Consumer reports she brushes teeth in shower. Observed able to touch top of hair – reported she was unable to remove elastic in hair because she “couldn’t feel the elastic because she couldn’t feel her hands.” Reports she needs A for nail care, shaving. Observed consumer using cell phone, unlock door, pick phone off floor.

- Dressing/Undressing (5/4 minutes per day for minimum assist): “Physical assist upper extremity dressing. Physical assist lower extremity dressing. Physical assist with removing footwear.”

Comments: “Observed consumer kick off shoe then use foot to step on sock and pull foot out of sock. Reported she could not put sock on because she could not feel the sock/grip the sock because she has no strength in hands. Observed her reach down and hold sock and pull slightly over foot and then stop saying she couldn’t do it. She asked mother to come and help put sock on. Reports she needs A to get upper and lower body clothing on because she can not feel things with her hands.

(Exhibit 3, pp. 13-16).

The MassHealth representative testified that MassHealth reviewed and denied the request for prior authorization for PCA services because it determined the appellant does not require assistance with two or more activities of daily living. She pointed out that the nurse evaluator’s comments highlight that the appellant receives coaching and supervision for some activities, but has the functional ability to complete her activities of daily living without physical assistance. To support this position the MassHealth representative stated that the appellant is noted to be independent with mobility and transfers, and no time was requested for assistance with these tasks (Exhibit 3, pp. 10-11). The nurse evaluator made the following comment in the mobility section: “Consumer came down flight of stairs and opened door when RN arrived at home. Observed I ambulate up flight of stairs back into home. Observed I up and down from stool in kitchen. No functional deficits noted. Consumer reports inner knee pain and leg pain” (Exhibit 3, p. 11). The MassHealth representative testified that the nurse’s observations do not describe an individual who would need assistance transferring in and out of the shower, or who would need physical assistance with tasks associated with grooming or dressing. Specifically, the nurse observed the appellant using a cell phone, unlocking a door, and picking up a phone off the floor. The MassHealth representative argues that these capabilities belie the appellant’s claims that she needs assistance with bathing, grooming, or dressing.

The appellant appeared at the hearing by phone and testified that on the day of the evaluation, she walked slowly down the stairs to open the door for the nurse. She stated that at the time of the evaluation, she had four locked fingers in her right hand which prevented her from completing many tasks such as pulling up her hair or opening a medicine bottle. She noted that she is right-handed. She stated that her fingers and toes are numb, and that she has pain and arthritis in her knees. The appellant stated that she had hand surgery this past December to release her locked fingers. She thinks the surgery was a failure because she is still having many problems with her fingers. She is still receiving physical and occupational therapy. She noted that she used a cane in the past, but the issues with her fingers prevent her from using one now. The appellant testified that she has an appointment to see a neurologist because she has head pain when she bends over. She had neck surgery in the past but does not know if her current pain is related to this past neck surgery.²

The MassHealth representative responded and stated that the PCA evaluation took place before the appellant's recent hand surgery. She stated that it is unclear from the appellant's testimony whether she is still healing from surgery, or whether the surgery was unsuccessful.

Findings of Fact

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

1. The appellant is a female in her 40s with diagnoses that include fibromyalgia, post-traumatic stress disorder, borderline personality disorder, anxiety, depression, radiculopathy, and a discectomy and fusion in 2013.
2. On December 1, 2022, the PCM agency conducted an in-home evaluation, and the nurse evaluator noted that the appellant indicated that she has no feeling in her hands and that they feel like "pins and needles." The nurse made note that the appellant came down the stairs independently to greet her and unlock the door, and was able to go back up the stairs independently. The nurse observed the appellant get on and off a kitchen stool independently. The nurse noted that the appellant was able to bend down to pick up her phone off the floor.
3. On [REDACTED] 2022, the appellant underwent hand surgery.
4. On December 12, 2022, MassHealth received a revaluation and prior authorization request for PCA services for the appellant in the amount of 7 day/evening hours per week.
5. The request was for assistance with three ADLs (shower, general grooming, and dressing/undressing) totaling 157 minutes per week; and four IADLs (meal preparation,

² The appellant also responded to the nurse evaluator's comment about how her presentation at this evaluation was very different from her presentation last year. She clarified that she did not have an in-person evaluation last year.

laundry, housekeeping, and shopping), totaling 260 minutes per week.

6. The PCA evaluation states that the appellant needs physical assistance with showering; with trimming nails, combing hair, and shaving; and with dressing and undressing.
7. The appellant is able to transfer and ambulate independently within her home. Her active range of motion of her upper and lower extremities is within functional limits bilaterally. The appellant was able to take off a shoe and to take off and partially put on a sock during the PCA evaluation.
8. On December 22, 2022, MassHealth denied the request for prior authorization of PCA services on the basis that the appellant does not require assistance with two or more ADLs.
9. On January 17, 2023, the appellant filed a timely appeal of the denial notice.

Analysis and Conclusions of Law

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410 (130 CMR 422.402). Per 130 CMR 422.403(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); and (4) the MassHealth agency has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 or grooming: physically assisting a member with basic care such as bathing, personal hygiene, or grooming;
- (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 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 personal care services; and
 - (c) other special needs approved by MassHealth 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 personal care 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

MassHealth also limits coverage to those services that have been determined to be medically necessary. Per 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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

MassHealth denied the appellant's PA request for PCA services because it determined that she does not require assistance with a minimum of two ADLs as set forth above. This determination is supported by the evidence. On the date of the evaluation, a day the appellant described as a "good day," the appellant was able to independently ambulate, transfer on and off a stool, negotiate stairs, unlock a door, bend to pick her phone up off the floor, and partially don and doff socks and shoes before asking her mother to assist (Exhibit 3). As MassHealth persuasively argues, the appellant presented as an individual with the functional ability to complete her activities of daily living without physical assistance. The nurse evaluator's comments suggest that the appellant's mother and PCA mostly supervise and coach the appellant, and provide physical assistance that the appellant may desire but does not technically require.³

Further, the appellant informed the parties that she recently underwent hand surgery to address her locked fingers – a procedure that should have *improved* her functional abilities. The record does not include the surgical records or any follow up evaluation, and thus it is not clear whether the appellant is still healing and can expect improvement, or whether she is now at baseline. In any case, the appellant seems to indicate that she is currently unable to perform some of the tasks she was able to do at the evaluation. If this is so, the appellant may want to reapply for PCA services with updated documentation about her current functional abilities. However, at this time, because the current record does not include reliable evidence that the appellant requires physical assistance with at least two activities of daily living, she has not met the threshold requirement for participation in the PCA program, and the appeal is denied.

Order for MassHealth

None.

³ An example can be found in the nurse evaluator's comments where she describes that the appellant's mother stands in the bathroom when the appellant showers, points out when the appellant misses any area, and *then* steps in to provide assistance (Exhibit 3).

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum