

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301814
Decision Date:	5/11/2023	Hearing Date:	05/05/2023
Hearing Officer:	Thomas J. Goode	Aid Pending:	No

Appearance for Appellant:
Mother

Appearances for MassHealth:
Donna Burns, R.N, Optum



*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:	PCA Services
Decision Date:	5/11/2023	Hearing Date:	05/05/2023
UHCSCO's Rep.:	Donna Burns, R.N., Optum	Appellant's Rep.:	Mother
Hearing Location:	Remote		

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 February 20, 2023, MassHealth notified Appellant that it had modified a request for Personal Care Attendant (PCA) services (130 CMR 422.000 *et seq.* and Exhibit 1). Appellant filed this appeal in a timely manner on March 6, 2023 (130 CMR 610.015 and Exhibit 2). A hearing was scheduled for April 7, 2023, and rescheduled at Appellant's request. Modification of a prior authorization request for PCA services is valid grounds for appeal (130 CMR 610.032(B)).

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 PCA services.

Summary of Evidence

MassHealth was represented by a registered nurse who testified that Appellant is [REDACTED] with primary diagnoses of hypokalemia, hypoparalysis, Ehlers Danlos Syndrome, mitochondrial disorder, orthostatic tachycardia, small fiber neuropathy, IBS, GERD, gastroparesis, constipation,

encephalopathy, autism, chronic joint and nerve pain, asthma, scoliosis, sleep apnea, sensory/tactile issues, migraine headaches, and cardiac ablation. A PICC¹ line was placed in June 2022 (Exhibit 4, p. 9). A prior authorization request was submitted to MassHealth by Arc of the South Shore on February 7, 2023 for 47.5 day/evening Personal Care Attendant (PCA) hours and 2 nighttime hours. By notice dated February 20, 2023, MassHealth modified the request for PCA hours to 38 day/evening hours and 2 nighttime hours per week for the prior authorization period March 3, 2023 through March 2, 2024 (Exhibit 1). MassHealth modified PCA time for assistance with eating requested 15 minutes, 3 times per day, 7 days per week for meals, and 5 minutes, 2 times per day, 7 days per week for snacks. The MassHealth representative testified that the prior authorization request states that Appellant chokes when eating, has swallowing issues, receives fluids via PICC line, and is described as a messy eater (Exhibit 4, p. 16). She testified that MassHealth does not cover PCA time for eating when there is a choking or aspiration risk and does not allow a PCA to deliver fluids via PICC line. A second modification was made to PCA time requested to administer medications which the MassHealth representative identified as a parental responsibility for MassHealth members under 18 years of age. She added that no time was approved for medication administration in the previous prior authorization request.

Appellant's mother testified that PCA time for eating was allowed in the previous prior authorization period. She added that Appellant mostly feeds herself but is a messy eater and needs supervision and some assistance due to tremors. Appellant's mother added that the PCA administers fluids via the PICC line and administers medications. She testified that she feels that time for eating should be approved because it was approved in the previous prior authorization period.

The MassHealth representative agreed to a total of 15 minutes per day, 5 minutes per meal to assist with eating, but otherwise maintained the modifications because Appellant is mostly able to feed herself.

Findings of Fact

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

1. Appellant is [REDACTED] with primary diagnoses of hypokalemia, hypoparalysis, Ehlers Danlos Syndrome, mitochondrial disorder, orthostatic tachycardia, small fiber neuropathy, IBS, GERD, gastroparesis, constipation, encephalopathy, autism, chronic joint and nerve pain, asthma, scoliosis, sleep apnea, sensory/tactile issues, migraine headaches, and cardiac ablation. A PICC line was placed in June 2022.
2. A prior authorization request was submitted to MassHealth by Arc of the South Shore on February 7, 2023 for 47.5 day/evening Personal Care Attendant (PCA) hours and 2 nighttime hours.

¹ Peripherally Inserted Central Catheter line.

3. By notice dated February 20, 2023, MassHealth modified the request for PCA hours to 38 day/evening hours and 2 nighttime hours per week for the prior authorization period March 3, 2023 through March 2, 2024.
4. MassHealth modified PCA time requested for assistance with eating 15 minutes, 3 times per day, 7 days per week for meals, and 5 minutes, 2 times per day, 7 days per week for snacks. MassHealth agreed to a total of 15 minutes per day to assist with eating.
5. Appellant is mostly able to feed herself but needs some assistance due to tremors.
6. PCA time was requested to administer medications which MassHealth denied, and no time was approved from medication administration in the previous prior authorization request.

Analysis and Conclusions of Law

Appellant has the burden of proving by a preponderance of the evidence the invalidity of the determination by the MassHealth agency.² PCA services require prior authorization.³ Pursuant to 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 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 450.204: Medical Necessity

The MassHealth agency does not pay a provider for services that are not medically necessary.

(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

² See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002) (burden is on appellant to demonstrate the invalidity of an administrative determination).

³ See 130 CMR 422.416.

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*.

Services covered under the PCA program include assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.⁴ Pursuant to 130 CMR 422.419(C)(2) the PCA

⁴ 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(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.

(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 PCA 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

must not provide any non-covered services as described in 130 CMR 422.412 as part of the PCA program described below with relevant emphasis:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;**
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

Appellant is [REDACTED] and eligible for PCA services. MassHealth modified the request for PCA time for assistance with eating, which is a covered service under the PCA program and may include assistance with tube feeding and special nutritional and dietary needs, but does not include administration of fluids via PICC line.⁵ Appellant is mostly able to feed herself but requires some assistance with eating due to tremors as testified to by her Mother. MassHealth approved 5-minute increments for 3 meals per day, but as Appellant primarily requires supervision, which is not a covered service, the modification of time for eating is otherwise correct. PCA time authorized for the current prior authorization period is based on medical necessity and the current evaluation, not on PCA time that may have been approved in a previous prior authorization period (130 CMR 422.416). Administration of medications prescribed by a physician is a covered service under the PCA program only if the medications would otherwise be self-administered, which is not the case

of hours of physical assistance that a member requires for IADLs.

⁵ See 130 CMR 422.410(A)(6) at fn. 4.

here and is a parental responsibility.⁶

For the foregoing reasons, the appeal is DENIED.

Order for MassHealth

None, other than authorize 15 minutes per day for assistance with eating as agreed to at hearing.

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.

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 J. Goode
Hearing Officer
Board of Hearings

cc: Optum

⁶ See 130 CMR 422.410(A)(2) at fn. 4.