

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301815
Decision Date:	5/8/2023	Hearing Date:	04/07/2023
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



Appearance for Optum MassHealth:

Mary Jo Elliott, RN



*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
Decision Date:	5/8/2023	Hearing Date:	04/07/2023
Optum MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	Daughter
Hearing Location:	Quincy Harbor South - Telephonic		

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 2/23/23, MassHealth modified the appellant's Prior Approval for MassHealth Personal Care Attendant (PCA) benefits because MassHealth determined the services were not medically necessary (130 CMR 410.303, 130 CMR 410.204 and Exhibit 1). The appellant filed this appeal in a timely manner on 3/6/23 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The Optum MassHealth representative testified that a prior authorization request for PCA services was received on the appellant's behalf on 2/10/23 from her PCA provider and is an initial evaluation request for the dates of service beginning 2/23/2023 and ending 2/22/2024. In the prior authorization

request for PCA services, the provider requested 47 hours and 30 minutes per week and 0 hours per night. The appellant's primary diagnosis is a stroke with left-sided paresis.

The Optum MassHealth representative testified that MassHealth modified the PCA request to 45 hours and 0 minutes per week. Modifications were made to the request for PCA services that include modification to the task of mobility transfers. The prior authorization requested 20 minutes, 4 times per day, 7 days a week for assistance with the transfers in and out of bed. MassHealth modified this request to 10 minutes, 4 times per day, 7 days because the time requested is longer than ordinarily allowed for someone in the appellant's condition. The Optum MassHealth representative testified that 10 minutes is the maximum allowed time for someone who need full assistance.

The appellant's representative testified that it takes 20 minutes to sit the appellant up and pivot her and then transfer her.

The Optum MassHealth representative testified that it is not safe to wait too long between pivoting the appellant and transferring her because this is when falls occur.

Findings of Fact

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

1. A prior authorization request for PCA services was received on the appellant's behalf on 2/10/23 from her PCA provider.
2. The PA is an initial evaluation request for the dates of service beginning 2/23/2023 and ending 2/22/2024.
3. In the prior authorization request for PCA services, the provider requested 47 hours and 30 minutes per week and 0 hours per night.
4. The appellant's primary diagnosis is a stroke with left-sided paresis.
5. MassHealth modified the PCA request to 45 hours and 0 minutes per week.
6. MassHealth made a modification to the task of mobility transfers. The prior authorization requested 20 minutes, 4 times per day, 7 days a week for assistance with the transfers in and out of bed.
7. MassHealth modified this request to 10 minutes, 4 times per day, 7 days because the time requested is longer than ordinarily allowed for someone in the appellant's condition.
8. It is not safe to wait too long between pivoting the appellant and transferring her because this is when falls occur.

Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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 personal care agency, 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; and
 - g. toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

130 CMR 422.403(C).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home. (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA. (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLs). (130 CMR 422.410(A)).

120 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

- (A) Activities of Daily Living. 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, 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 personal care 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 personal care 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The requested services must also be medically necessary for prior authorization to be approved. (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) A service is “medically necessary” if:
- (1) it is reasonably calculated to prevent, diagnose, prevent 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. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the MassHealth 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.

Regulations at 130 CMR 422.412 describe non-covered PCA services:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (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;
- (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; or
- (G) surrogates, as defined in 130 CMR 422.402.
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

Per 130 CMR 503.007, MassHealth is the payer of last resort and only pays for health care and related services when no other source of payment is available, except as otherwise required by federal law.

- (A) Health Insurance. Every applicant and member must obtain and maintain available health insurance in accordance with 130 CMR 505.000: Health Care Reform: MassHealth: Coverage Types. Failure to do so may result in loss or denial of eligibility unless the applicant or member is
 - (1) receiving MassHealth Standard or MassHealth CommonHealth; and
 - (2) younger than 21 years old or pregnant.
- (B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available
 - (1) through the member's health-insurance, if any; or
 - (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.

The appellant has the burden “to demonstrate the invalidity of the administrative determination.” See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

The appellant requested PCA assistance with transfers in and out of bed at 20 minutes, 4 times per day for 7 days a week. MassHealth modified this request to 10 minutes, 4 times per day for 7 days a week. The Optum MassHealth representative testified that 10 minutes per episode is the maximum allowed for someone who needs full assistance. The appellant’s representative testified that it takes 20 minutes to move the appellant. The Optum MassHealth representative testified that spending too long between pivoting and transferring the appellant is not safe because a fall could occur. For this reason, the appeal for transfers 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.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

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