

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2302140
Decision Date:	5/26/2023	Hearing Date:	04/12/2023
Hearing Officer:	Marc Tonaszuck	Record Open to:	05/10/2023

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Donna Burns, RN, 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:	Dismissed in part; Denied in part	Issue:	Personal Care Attendant Services
Decision Date:	5/26/2023	Hearing Date:	04/12/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South	Aid Pending:	No

Authority

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

Jurisdiction¹

Through a notice dated -01/25/2023, MassHealth denied the appellant's prior authorization request for personal care attendant (PCA) services (130 CMR 422.410; Exhibit 1). A timely appeal was filed by the appellant on 03/16/2023 (130 CMR 610.015(B); Exhibit 2). Modifications or denial of a request for assistance are valid grounds for appeal (130 CMR 610.032).

A fair hearing took place before the Board the Hearings on 04/12/2023. At the fair hearing, the parties requested an opportunity to submit additional documentation. The record remained open until 04/26/2023 for Optum's submission and until 05/10/2023 for the appellant's response (Exhibit 5).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth denied appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in denying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request for PCA services was received on appellant's behalf on 01/13/2023 from her PCA provider, Northeast ARC, Inc. (Provider), and is a re-evaluation request. In the prior authorization request for PCA services, the provider requested 28:50² day/evening hours per week. Nighttime attendant hours were not requested.

The appellant is in her [REDACTED] and she lives independently in the community. The primary diagnoses affecting her ability to function independently are chronic diverticulosis, colostomy, complications, failure to thrive, and weakness (Exhibit 4).

The Optum representative testified that on 01/25/2023, MassHealth denied the PCA request. MassHealth stated that regulations permit MassHealth to authorize personal care attendant services only when there is a medical need for two or more activities of daily living (ADL). In this case, MassHealth determined that the appellant has the medical need for assistance with one ADL; specifically bathing (Exhibits 1 and 4).

The appellant responded that she needs assistance with more than two ADLs. She stated she has weakness and is unbalanced. She also has pain from sciatica. She cannot bend forward, she gets dizzy and tired. The appellant stated she has poor coordination. She has recently lost weight and is struggling. She cannot wash her legs or back and standing is unsafe. She needs assistance in case she loses her balance. The appellant stated she is able to shave her own under-arms, but is not able to shave her legs without assistance.

The MassHealth representative responded that she would like an opportunity to adjust the approval time. She requested that the record remain open so that she could review the documentation again and provide an authorization for personal care attendant services. Her request was granted and the record remained open in this matter until 04/26/2023 for Optum's

² PCA time is referred to in this format, 28:50, to signify 28 hours and 50 minutes.

submission and until 05/10/2023 for the appellant's response (Exhibit 5).

On 04/18/2023, Optum submitted the following statement:

After hearing testimony from [the appellant] at the hearing, MassHealth will approve requested time for bathing, grooming (nail care and shaving), dressing, undressing, meal preparation, laundry, housekeeping, shopping. Bowel care is modified to 10 X 1 X 7³ for daily assistance with ileostomy care and 10 X 1 X 2 for assistance with changing ostomy device. Per testimony, appellant states she can empty the ileostomy bag independently but needs some assistance with clean up. Medication prepour is not approved as appellant has medication list and demonstrated she is able to read labels and has no functional issue with her hands. MD transport is approved for 24 X 1 (modified GI doctor to 12 visits per year) as there is no medical necessity for 36 visits per year as requested.

(Exhibit 6).

On 04/25/2023, the appellant provided the following statement:

Below is a list of tasks I need assistance with daily categorized by morning, afternoon and night. A majority of these tasks have to be done multiple times a day.

Morning

- Assistance getting out of bed in the morning
- Assistance with fecal clean up from previous night
- Morning grooming
- Assistance to get in and out of shower as well wash below the waist.
- Assistance to get dress from the waist down
- Assistance changing bed sheets and linens due to bag leakage during the night
- Assistance bringing down soiled linens down to basement (2 floors down)
- Assistance down 13 stairs to living room area.
- Assistance with morning meal and pill distribution.

Afternoon

- Assistance with daily laundry – washer and dryer are located in basement. I can't carry anything over 5 lb let alone wet laundry. I also cannot bend and reach into the washer or dryer due to my abdomen.
- Assistance with all household items for example mopping, sweeping, bathroom clean up and disinfecting.
- During the afternoon I change my bag up to 10x a day due to liquid build up

³ PCA time denoted in this format (10 X 1 X 7) means 10 minutes, 1 time per day, 7 days per week.

- I have many accidents during clean up and need assistance changing my bag and cleaning the area.
- Assistance with lunch preparation and pill distribution

Night

- Assistance with Dinner preparation. Dinner is usually a larger meal and requires more time standing/bending to prepare.
- Assistance with Dinner clean – dishes, trash removal.
- Nightly pill distribution and pain management
- Assistance with bringing my clean laundry and linens upstairs from the basement.
- Assistance with going up 13 stairs to where my bedroom is
- Assistance with bed making and putting laundry away.
- Nightly grooming
- Assistance to get in and out of shower as well wash below the waist.
- Assistance to get dress from the waist down

This is a list of my daily routine from morning to night. I also need assistance with weekly grooming activities as well as assistance with all outside errands like grocery shopping, medication pick up, appointments etc. Please take into consideration that this layout is of a good day. I have many days where I suffer from pain and discomfort due to illness as well as my mental health being altered. I can no longer be completely independent even though I wish to be. I can't seem to understand why I was denied when social security has deemed by medical condition severe enough to receive benefits. I was approved for 24 hours in the beginning of all this and a nurse deemed I needed 28 hours a week.

(Exhibit 7).

Findings of Fact

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 01/13/2023 from her PCA provider, Northeast ARC, Inc., and is a re-evaluation request (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 28:50 day/evening hours of assistance per week (Testimony; Exhibit 4).
3. Nighttime attendant hours were not requested (Testimony; Exhibit 4).

4. The appellant is an adult who lives independently in the community. The primary diagnoses affecting her ability to function independently are chronic diverticulosis, colostomy, complications, failure to thrive, and weakness (Testimony; Exhibit 4).
5. On 01/25/2023, MassHealth denied the PCA request (Testimony; Exhibits 1 and 4).
6. A timely appeal was filed on the appellant's request on 03/16/2023 (Exhibit 2).
7. A fair hearing took place on 04/12/2023 before the Board of Hearings (Exhibit 3).
8. MassHealth initially denied the request for PCA services because it determined that the appellant did not require assistance with at least two ADLs (Testimony; Exhibit 4).
9. The record remained open in this matter until 04/26/2023 for Optum's submission and until 05/10/2023 for the appellant's response (Testimony; Exhibit 5).
10. During the record open period, MassHealth adjusted its approval and approved all time requested in the areas of bathing, grooming (nail care and shaving), dressing, undressing, meal preparation, laundry, housekeeping, shopping (Exhibit 6).
11. The appellant's provider requested 10 X 14 X 7 for assistance with bowel care. The provider noted that she requires "physical assistance with clothing management, physical assistance with emptying colostomy pouch. She needs assistance with emptying sigmoid colostomy bag over 14 times per day due to filling with fluids consistently, due to unable to bend, generalized weakness and risk for falls" (Exhibit 4).
12. MassHealth modified the request for bowel care to 10x1x7 for daily assistance with ileostomy care and 10x1x2 for assistance with changing ostomy device (Exhibit 6).
13. Appellant can empty the ileostomy bag independently but needs some assistance with clean up (Testimony).
14. The appellant's provider requested 10 X 1 X 1 for assistance with medications. The provider noted that the PCA prefill weekly medication minder due to generalized weakness (Exhibit 4).
15. MassHealth denied the appellant's request for assistance with medications (Exhibit 6).
16. The Appellant has medication list and demonstrated she is able to read labels and has no functional issue with her hands (Exhibit 6).
17. The appellant's provider requested 54 X 1 X 1 for assistance with transportation to medical

appointments. The MassHealth representative testified that the time authorized for assistance with transportation to medical appointments is calculated using the number of annual appointments and considers the mileage and a standard amount of time in and out of the home and the offices (Testimony; Exhibit 4).

18. MassHealth modified the request for assistance with medical transport to 24 X 1 X 1 (Exhibit 6).

19. The appellant's provider requested 36 annual visits to the gastro-intestinal doctor (Exhibits 4 and 6).

20. The appellant sees her gastro-intestinal doctor 12 times per year (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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 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, or 517.007 (emphasis added).

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) MassHealth covers personal care 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 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

(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/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 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).

At the close of the hearing record open period, MassHealth approved all time requested in the areas of bathing, grooming (nail care and shaving), dressing, undressing, meal preparation, laundry, housekeeping, shopping. Thus, this portion of the appeal is dismissed.

MassHealth modified the request for assistance in the areas of bowel care, medication pre-pour, and transportation to medical appointments.

Bowel Care

The appellant's provider requested 10 X 14 X 7 for assistance with bowel care. The provider noted that she requires "physical assistance with clothing management, physical assistance with emptying colostomy pouch. She needs assistance with emptying sigmoid colostomy bag over 14 times per day due to filling with fluids consistently, due to unable to bend, generalized weakness and risk for falls." MassHealth modified the request for assistance with bowel care to 10x1x7 for daily assistance with ileostomy care and 10x1x2 for assistance with changing ostomy device. MassHealth based its modification on the appellant's testimony that she can empty the ileostomy bag independently but needs some assistance with clean up.

In the appellant's post hearing submission, she stated that "during the afternoon I change my bag up to 10x a day due to liquid build up; I have many accidents during clean up and need assistance changing my bag and cleaning the area."

The appellant has not provided evidence to show MassHealth's modified time for bowel care will not meet her medical needs. She has not asserted any specific amount of time required for assistance with this task. MassHealth's modification is supported by the material facts in the hearing record and the relevant regulations. Accordingly, this portion of the appeal is denied.

Assistance with Medications

The appellant's provider requested 10 X 1 X 1 for assistance with medications. The provider noted that the PCA refill weekly medication minder due to generalized weakness.

MassHealth denied the request for assistance with medications. The MassHealth representative wrote that according to the appellant's testimony, she is able to read labels and has no functional issue with her hands.

The appellant did not address her request for assistance with medications in her post-hearing submission. MassHealth's modification is supported by the material facts in the hearing record and the relevant regulations. Accordingly, this portion of the appeal is denied.

Transportation to Medical Appointments

The appellant's provider requested 54 X 1 X 1 for assistance with transportation to medical appointments. The MassHealth representative testified that the time authorized for assistance with transportation to medical appointments is calculated using the number of annual appointments and considers the mileage and a standard amount of time in and out of the home and the offices. MassHealth modified this request to 24 X 1 X 1. The MassHealth representative wrote that this time allows for 12 annual visits to the appellant's gastrointestinal doctor, instead of the requested 36 visits per year.

The appellant did not address the request for assistance with medical appointments in her post hearing submission. Accordingly, MassHealth's modification is supported by the material facts in the hearing record and the relevant regulations. This portion of the appeal is therefore denied.

For the foregoing reasons, this appeal is dismissed in part; denied in part.

Order for MassHealth

Approve requested time for bathing, grooming (nail care and shaving), dressing, undressing, meal preparation, laundry, housekeeping, shopping. Approve bowel care at 10 X 1 X 7 and 10 X 1 X 2. Approve MD transport at 24 X 1 X 1.

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, Division of Medical Assistance, 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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