

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2302154

**Decision Date:** 6/2/2023

**Hearing Date:** 04/12/2023

**Hearing Officer:** Marc Tonaszuck

**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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	6/2/2023	<b>Hearing Date:</b>	04/12/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN, Optum	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	No

## Authority

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

## Jurisdiction<sup>1</sup>

Through a notice dated 02/17/2023, MassHealth informed the appellant that it denied his request for authorization of personal care attendant (PCA) services because he does not have documented need for assistance with at least two activities of daily living (ADLs) (130 CMR 420.001; Exhibit 1). The appellant filed this appeal with the Board of Hearings in a timely manner on 03/17/2023 (130 CMR 610.015(B); Exhibit 2).

---

<sup>1</sup> 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 the appellant's request for PCA services.

## Issue

Was MassHealth correct in denying the appellant's request for PCA services?

## Summary of Evidence

MassHealth was represented by a registered nurse employed by Optum, the contractor that makes the PCA decisions for MassHealth. The appellant represented himself in these proceedings. All parties appeared telephonically.

The MassHealth representative testified that on 02/03/2023, a prior authorization request (PA) for PCA services was submitted on the appellant's behalf by his PCA provider, Stavros, Inc. (Provider). In the PA request, the provider requested 12.00 hours of day/evening PCA assistance for a period of one year. Nighttime attendant hours were not requested. On 02/17/2023, MassHealth determined that the appellant does not have documented need for assistance with at least two activities of daily living (ADLs), and therefore denied the request for PCA services.

According to the documentation submitted by the PCA provider with the PA, the appellant is in his 60's and he lives independently in the community. His primary diagnoses are chronic high blood pressure, back pain, osteoarthritis and vertigo. PCA time was requested in the areas of bathing (6 minutes, 1 time per day, 7 days per week – 6 X 1 X 7<sup>2</sup>), toenail trimming (5 X 1 X 1), dressing (6 X 1 X 7), undressing (3 X 1 X 7), and assistance with medication (10 X 1 X 1). His provider also requested PCA time for assistance with the instrumental activity of daily living (IADL) of meal preparation and clean-up.

The MassHealth representative testified that the provider states the appellant is seeking assistance with his ADLs because he has a cardiac history, and a history of falls. The appellant states he suffers from vertigo, which makes him a fall risk and that he is unable to bend due to pain. The MassHealth representative testified that the appellant has no documented durable medical equipment that could assist him with his showering (shower bench, grab bar), dressing (grabber and long shoe horn), and nail clipping (a stool to prop his feet on). Additionally, she testified that the appellant should be able to use a paper calendar or cell phone reminder for his medications. She recommended that the appellant speak with an occupational therapist or his primary care provider about obtaining the necessary equipment. MassHealth determined that if the appellant is provided the above "tools," he will not need assistance with at least 2 ADLs.

---

<sup>2</sup> PCA time in this format, 6 X 1 X 7, means 6 minutes, 1 time per day, 7 days per week.

The appellant testified that he has “memory loss,” and he “forgets where he is going when he drives.” He has chronic back pain and a pacemaker. The appellant reported that he is “very weak,” when he goes up stairs. When he bends over to cut his toenails, he “gets dizzy,” and can lose his balance. He is afraid of falling and hitting his head on the hard floor of his home. He testified that his sister and his niece help him now with his toenail trimming. The appellant would like a PCA to help him for medication reminders and to make sure he does not lose his balance and fall when getting into and out of the shower, clipping his nails, and getting dressed.

The MassHealth representative responded that the PCA program does not cover assistance provided in the form of cueing, prompting, supervision, guiding, or coaching. Only hands-on services are covered. She repeated her recommendation that the appellant seek the appropriate durable medical equipment so that he may live more independently.

## Findings of Fact

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

1. The appellant is a MassHealth member (Testimony; Exhibit 4).
2. The appellant is in his 60’s and he lives independently in the community. His primary diagnoses are chronic high blood pressure, osteoarthritis, and vertigo (Testimony; Exhibit 4).
3. On 02/03/2023, a prior authorization request (PA) for PCA services was submitted on the appellant’s behalf by his PCA provider, Stavros, Inc. (Provider). It is an initial evaluation. In the PA request, the provider requested 12.00 hours of day/evening PCA assistance for a period of one year. Nighttime attendant hours were not requested (Testimony; Exhibit 4).
4. On 02/17/2023, MassHealth determined that the appellant does not have documented need for assistance with at least two activities of daily living (ADLs), and therefore denied the request for PCA services (Testimony; Exhibits 1 and 4).
5. A timely appeal was filed by the appellant on 03/17/2023 (Exhibit 2).
6. A fair hearing was held before the Board of Hearings on 04/12/2023 (Exhibit 3).
7. Time was requested in the ADL areas of bathing (6 minutes, 1 time per day, 7 days per week – 6 X 1 X 7<sup>3</sup>), toenail trimming (5 X 1 X 1), dressing (6 X 1 X 7), undressing (3 X 1 X 7), and assistance with medication (10 X 1 X 1). The appellant’s provider also requested PCA time for assistance with the instrumental activity of daily living (IADL) of meal preparation and clean-

---

<sup>3</sup> PCA time in this format, 6 X 1 X 7, means 6 minutes, 1 time per day, 7 days per week.

- up. (Testimony; Exhibit 4).
8. The appellant requested PCA time to remind him to take his medications and to supervise him to make sure he does not fall (Testimony; Exhibit 4).
  9. The appellant does not have a shower bar or a shower chair to help him keep his balance while bathing (Testimony).
  10. The appellant does not have a long shoehorn or a "grabber" to help him get dressed and undressed (Testimony).
  11. The appellant does not have a bench or stool to prop his foot up against to help him cut his own toenails (Testimony).
  12. The appellant does not have a cell phone or paper calendar to help him remember to take his medications (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.

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.

**(Emphasis added.)**

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 personal care attendant (PCA) services from MassHealth. MassHealth denied the request for PCA time based on its review of the documentation and its determination that the appellant does not need assistance with at least 2 ADLs. The appellant requested assistance with bathing, toenail clipping, dressing, undressing, medication reminders and assistance with meal preparation and clean up. His provider noted, and the appellant confirmed, that he needs assistance due to his forgetfulness, vertigo, his risk of falls, and pain when bending.

MassHealth presented testimony that the appellant can be assisted with "tools," in the form of durable medical equipment, which is a less costly alternative to PCA services. The MassHealth representative testified that if the appellant had a shower chair and a grab bar in the shower, he could greatly reduce his risk of falls. Additionally, he could use a long shoehorn and a "grabber" to help himself get dressed and undressed. A stool or bench can be used to help him trim his toenails. Finally, a cell phone or a paper calendar can be used to remind him to take his medications. The appellant confirmed he had not considered any of the above recommendations.

MassHealth determination that the appellant can live more independently if he has some or all of the above "tools," is credible and supported by the facts in the hearing record and the regulations. Any assistance the appellant may need is explicitly not covered, as it is assistance in the form of cueing, prompting, supervision, guiding, or coaching. MassHealth correctly determined the appellant does not have a documented need for assistance with 2 or more ADLs. MassHealth correctly denied the appellant's PA. Accordingly, this appeal 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.

---

Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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