

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed

Appeal Number: 2302616

Decision Date: 5/8/2023

Hearing Date: 05/01/2023

Hearing Officer: Alexis Demirjian

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, RN, Clinical Reviewer
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	Issue:	Modification of Prior Authorization – PCA
Decision Date:	5/8/2023	Hearing Date:	05/01/2023
MassHealth’s Rep.:	Mary Jo Elliott, RN	Appellant’s Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South 2	Aid Pending:	No

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 modified the appellant’s prior authorization request for Personal Care Attendant (“PCA”) hours. (see 130 CMR 450.303 and Exhibit 3). The appellant filed this appeal in a timely manner on March 30, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Individual MassHealth agency determinations regarding scope and amount of assistance are valid grounds for appeal. (see 130 CMR 610.032 (A) (5)).

Action Taken by MassHealth

MassHealth modified the appellant’s prior authorization request for PCA time.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303, in modifying the appellant’s prior authorization request.

Summary of Evidence

The appellant was represented by her daughter at the hearing. In filings made by the appellant's daughter, there were a number of issues raised related to the appellant's provider, Tempus. The appellant's daughter reiterated those concerns at hearing, specifically the appellant's daughter has alleged that Tempus did not complete an appropriate evaluation of her mother's physical and cognitive abilities and did not request enough services.

Under appeal, is the prior authorization submitted by Tempus is for the period of March 1, 2023 and ending February 29, 2024. The request submitted by Tempus was for 13 hours and 0 minutes per week and 0 hours per night.¹

MassHealth had modified this request by approving only 10 hours and 30 minutes per week. The modifications made by MassHealth were in meal preparation and laundry. The rationale provided for the modification was that the time requested for those tasks exceeded what MassHealth ordinarily finds necessary to complete these tasks.

The provider agency requested help with meal preparation for lunch at 20 minutes per episode, 1 episode per day, 7 days per week. The provider agency requested help with meal preparation for dinner at 35 minutes per episode, 1 episode per day, 7 days per week. After hearing testimony from the appellant's daughter, MassHealth agreed to restore the time as requested by the provider agency for both lunch and dinner.

With respect to laundry, the provider agency requested 75 minutes per episode, 1 episode per week for help with the appellant's laundry. The appellant's daughter testified that the appellant produces a significant amount of laundry due to incontinence issues and that 75 minutes per week was appropriate. After hearing this testimony, MassHealth agreed to restore the requested time for laundry.

After the restorations were made, the appealable issues were resolved.

With respect to the issues raised by the appellant's daughter related to Tempus, specifically the appellant's daughter does not want the same nurse assigned to conduct her mother's evaluations. This authority falls outside of the scope of the Board of Hearings; however, the appellant's daughter was urged by MassHealth to avail herself to caretaker support services and further informed that she is not obligated to use Tempus as her PCM provider should she find them unsatisfactory.²

Findings of Fact

¹ The appellant's daughter vigorously argued that the appellant needed night hours and according to her, Tempus told her MassHealth did not cover night hours.

² MassHealth confirmed the appellant's address and located Minuteman Senior Services as a local elder care service agency which can help with caretaker support and provide numerous services that may be helpful to the appellant and the appellant's daughter. Minuteman Senior Services are located at One Burlington Woods Drive, Suite 101, Burlington, MA 01803 and their telephone number is (781) 272-7177.

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

1. The appellant's provider requested 13 hours and 0 minutes per week and 0 hours per night for PCA assistance. (Exhibit 5; Testimony)
2. MassHealth modified this request to 10 hours and 30 minutes per week. (Exhibit 5; Testimony).
3. MassHealth made modifications for the tasks of meal preparation and laundry. (Exhibit 5; Testimony).
4. The appellant's provider requested assistance with lunch preparation in the amount of 20 minutes per episode, 1 episode per day, 7 days per week. (Exhibit 5; Testimony).
5. At hearing MassHealth agreed to rescind its modification and restore the requested time for lunch to 20 minutes per episode, 1 episode per day, 7 days per week. (Testimony).
6. The appellant's provider requested assistance with dinner preparation in the amount of 35 minutes per episode, 1 episode per day, 7 days per week. (Exhibit 5; Testimony).
7. At hearing MassHealth agreed to rescind its modification and restore the requested time for dinner to 35 minutes per episode, 1 episode per day, 7 days per week. (Testimony).
8. The appellant's provider requested 75 minutes per episode, 1 episode per week for assistance with the task of laundry. (Exhibit 5; Testimony).
9. At hearing MassHealth agreed to rescind its modification and restore the requested time for laundry assistance to 75 minutes per episode, 1 episode per week. (Testimony).
10. Issues under appeal with respect to the February 20, 2023 notice were resolved during the hearing.

Analysis and Conclusions of Law

Pursuant to 130 CMR 403 (C), 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 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.

Personal Care Attendants (“PCAs”) must provide services in accordance with 130 CMR 422.000 and the scope of services described under 130 CMR 422.419 (C) and the service agreement established pursuant to 130 CMR 422.423.

Pursuant to 130 CMR 450.204 (B), medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.

139 CMR 422.405 describes the Personal Care Management (“PCM”) and Fiscal Intermediary Functions.

(A) Personal Care Management Agencies.

(1) Personal Care Management Agency Functions. Organizations that contract with the MassHealth agency to provide PCM agency functions must perform the range of functions specified in the PCM agency contract and contained within 130 CMR 422.000. Such functions include, but are not limited to, those described in 130 CMR 422.419(A).

(2) Selecting a Personal Care Management Agency. The member selects the PCM agency from the PCM agencies under contract with MassHealth to perform this function. The PCM agency selected by the member will conduct the PCA evaluation and provide PCM functions to the member.

All issues related to the modifications made by MassHealth were resolved during the hearing. Accordingly, this email is DISMISSED.

Although outside the jurisdiction of the hearing officer, the appellant’s daughter repeatedly raised her dissatisfaction with the appellant’s PCM, Tempus. According to the regulations, the appellant may select a PCM agency from the list of PCM agencies under contract with MassHealth to perform evaluations for the appellant. A list of PCM agencies under contract with MassHealth may be found at:

<https://www.mass.gov/service-details/personal-care-management-pcm-agency-list#:~:text=Personal%20Care%20Management%20%28PCM%29%20Agency%20List%201%20AdLib%2C,of%20Worcester%20Area%2C%20Inc.%208%20Ethos%20More%20items>

(last viewed on May 8, 2023)

Additionally, the appellant’s daughter may wish to review the PCA Consumer Guidebook that can be found at:

https://www.mass.gov/doc/pca-consumer-handbook-personal-care-attendant-program/download?_ga=2.43357479.34523050.1683546421-1104682731.1652449906

(last viewed on May 8, 2023)

This guidebook provides an overview of the PCA program and includes helpful numbers including organizations that can help with services.

Order for MassHealth

None. MassHealth informed the Hearing Officer that it was issuing a new approval notice that would reflect the restored time discussed during the hearing.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

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