

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304935
Decision Date:	10/20/2023	Hearing Date:	07/17/2023
Hearing Officer:	Casey Groff	Record Closed:	9/26/23

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, R.N.; Clinical Appeals 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:	Denied	Issue:	Personal Care Attendant Services
Decision Date:	10/20/2023	Hearing Date:	07/17/2023
MassHealth's Rep.:	Mary-Jo Elliot, R.N.	Appellant's Rep.:	Pro se; Daughter
Hearing Location:	Board of Hearings (Remote)	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 May 24, 2023, MassHealth informed Appellant that it was denying her request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 2. Appellant filed this appeal in a timely manner on June 16, 2023. See 130 CMR 610.015(B); Exhibit 1. Denial of a request for PCA services is a valid basis for appeal. See 130 CMR 610.032. A hearing for the appeal took place on July 17, 2023. See Exh. 3. At the conclusion of the hearing, the record remained open until September 26, 2023 for the parties to submit and review additional evidence. See Exhs. 6-8.

Action Taken by MassHealth

MassHealth denied Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in denying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Through testimony and documentary evidence, the MassHealth representative presented the following information: Appellant is a female MassHealth member under the age of 65. See Exh. 4, p. 3. On May 10, 2023, Appellant's personal care management (PCM) agency submitted an initial prior authorization (PA) request to MassHealth seeking personal care attendant (PCA) services between May 10, 2023 and May 9, 2024. Id. at 5. On May 24, 2023, MassHealth denied Appellant's PA request because the information provided failed to show Appellant met the required criteria for being clinically eligible for services, in accordance with 130 CMR 422.403(C); specifically, that the documentation did not demonstrate she was unable to perform two or more ADLs that were a result of a chronic or permanent condition.

The MassHealth representative reviewed the PA request and the documents that were included therein. According to the PA request, Appellant had an initial PCA evaluation on 5/1/23 which was performed by a registered nurse (RN) and occupational therapist (OT) from the PCM agency. Id. at 10. The diagnoses which the RN and OT cited as Appellant's "chronic disabling conditions" that prevented her from performing activities of daily living (ADLs), included fibromyalgia, total knee arthroplasty (TKA) (also referred to as total knee replacement (TKR)) of the left knee, osteoarthritis, weakness, diabetes, and hypertension. Id. at 11, 40, 49.

Nursing assessment notes indicated that Appellant complained of fatigue and generalized pain related to fibromyalgia. On examination, Appellant was able to raise her arms toward head and reach back; she was independent with sit to stand and bed transfers, bed mobility and ambulating with her roller walker. Id. at 49. The report nursing assessment noted that Appellant had impaired balance and limited standing tolerance due to left knee pain, and pain related to fibromyalgia. Id. at 49. It was also noted that Appellant lived alone in a two-level apartment, however at the time of assessment she was staying on the first floor due to her recent surgery. Id. at 49.

The MassHealth representative also reviewed the OT functional status report, which identified Appellant as independent in mobility, toileting, eating, passive range of motion exercises, medication administration, transferring in/out of bed, and transferring on/off the toilet. Id. at 40-41. Additional OT findings showed that Appellant was able to manage stairs; that she was capable of driving; and that she used various equipment for independence including a commode, shower chair, and cane. Id. The report indicated that Appellant required minimum assistance with dressing and transfers in/out of tub, moderate assistance in bathing, and that she was dependent for lotion application. Id. at 40. With respect to instrumental activities of daily living (IADLs), Appellant was found to require greater levels of PCA assistance, including maximum assistance with housekeeping, laundry, and equipment maintenance, and moderate assistance with shopping. Id.

Based on the assessment, the PCM agency sought approval for 25 minutes per-day for PCA

assistance with bathing/washing lower extremities and back and transferring in/out of the shower; 5 minutes per-day for assistance with lotion application to the lower extremities and back; and 11 minutes daily for assistance dressing and undressing of the lower body. Id. at 14-23. In support of the requests, the PCM agency consistently cited Appellant's inability to "reach feet forward bending," that she is [REDACTED] lbs with "large abdominal girth present," that she has decreased strength, limited endurance, and fatigue. Id. The PA request sought additional time for PCA assistance in performing IADLs. Id. at 8-9.

The MassHealth representative next referred to physical therapy (PT) notes that were include in the PA submission. An initial intake on 2/10/23 reflected a PT goal to help with ambulation and endurance following a recent hospitalization, and to maximize safety and functional mobility through exercises, education, and training. Id. at 43-48. In the following PT certification dated 4/3/23, Appellant's primary medical concern was "aftercare following joint replacement surgery, left artificial knee." Id. The plan of care focused on post-surgery recovery, fall prevention, wound care, and therapeutic exercises, with a goal of becoming more independent with ambulation in least restrictive device and to discharge to self-care. Id. The MassHealth representative testified that the PT notes, overall, reflected a positive outcome and expectation for Appellant's progress and did not reveal anything glaring that would indicate Appellant's need for further services.

The MassHealth representative testified that to receive PCA services, the individual must meet certain regulatory criteria. Among the prerequisites, members must demonstrate, through documentation, that they have a permanent or chronic disability that impairs their ability to perform two-or-more ADLs daily without physical assistance of another person. Because Appellant's functional capabilities were evaluated while she was recovering from recent surgery, MassHealth sought further information from the PCM agency to describe what was causing her need for assistance with ADLs. In response, the evaluating nurse opined that Appellant's post-operative status did not affecting her functional ability during the assessment "as [the Appellant] complained more about limitations [related to] fibromyalgia such as fatigue and generalized pain" See Exh. 4, p. 57. The RN also noted her finding that Appellant was "unable to reach her feet [due to] a large abdominal girth." See id. Notwithstanding the additional response, MassHealth ultimately found that the PA lacked sufficient evidence to show the existence of a chronic condition that had not been addressed, such as the knee surgery and ongoing PT exercises, that was impacting Appellant's functional ability. Accordingly, MassHealth denied the request for PCA services pursuant to its 6/5/23 notice.

Appellant and her daughter appeared at hearing via telephone. Appellant's daughter, who primarily spoke on her mother's behalf, testified that the diagnoses listed by the PCM agency did not reflect the correct basis for Appellant's need for PCA services. Rather, Appellant's need for help in performing ADLs arose in February 2023 when she had a cerebral vascular accident (CVA) or stroke. She was hospitalized for several days, after which Appellant showed a decline in functional status. The daughter testified that prior to the stroke, Appellant was able manage her

fibromyalgia, diabetes, and arthritis and was mostly independent with ADLs. She was able to drive and was far more active. After the stroke, Appellant was unable to care for herself, her legs became very heavy, and she was chronically fatigued, such that she stopped driving. The hospital discharged Appellant with orders for PT, from which Appellant has not benefited. She no longer leaves the house. The daughter testified that the CVA impacted both legs and that Appellant needs help with everything, including transfers and ambulation which was not requested by the PCM agency. Her brother has since been staying with Appellant to help her get up and out of bed, and in and out of the bathroom for toileting and bathing. The daughter explained that the CVA occurred a month prior to the TKR and that the surgery has nothing to do with her need for PCA services. Appellant's daughter agreed with MassHealth that the PCM assessment was not accurate given that it took place during her recovery.

Prior to the hearing, Appellant submitted 19-pages of medical records from visits with her primary care physician (PCP), [REDACTED], MD. See Exh. 5. Under the headings of "problems" and "past medical history" in an encounter note 6/28/23, the record reflected the diagnoses listed in the PA, including arthritis, diabetes, fibromyalgia, hypertension, among others. Id. at 7-8, 9. The "problems" section of the record also listed "cerebrovascular accident," but it did not list an onset date, and the CVA was not listed under Appellant's "past medical history." Id. For "activities of daily living," Appellant reported that she had difficulty walking or climbing stairs, but answered in the affirmative that she was able to care for herself and did not have difficulty dressing, bathing, doing errands alone, or with transportation. Id. at 8. Her surgical history reflected the TKR surgery that was performed on 3/28/23. Id. at 9. The medical record also included a summary of Appellant's PCP visit on 2/16/23, which followed a 72-hour hospitalization from 2/7/23 and 2/10/23. Id. at 17. The encounter notes state that Appellant "had extensive work up during recent hospitalization with advanced imaging of the brain, she had CT of head, MRI of brain, CT of cervical spine, extensive blood work, everything fairly unremarkable..." Id. The entry did not mention CVA, stroke, or refer to any diagnosis or basis for the hospitalization. Id.

During the 6/28/23 encounter, Dr. [REDACTED] noted that Appellant "is recovering from her total knee arthroplasty on the left side" and that "she continues to struggle with pain and swelling of the left knee...., she is having a really difficult time ambulating, she uses a walker at home" and that she felt unstable on her legs. Id. at 17. Per Appellant's request, the physician prescribed a five-day supply of ketorolac for pain. Id. A review of systems was positive for fatigue, urinary loss control, muscle aches, back pain, and swelling in the extremities, but negative for muscle weakness and arthralgias/joint pain. Id. A physical examination revealed that Appellant was overweight, had limited ambulation and ambulated with a walker, and had edema in the extremities. Id. at 17-18. The remainder of the examination was unremarkable showing that Appellant had normal movement of all extremities; no contractures, tenderness, or bony abnormalities; no cyanosis or varicosities; and normal motor strength and tone. Id.

The MassHealth representative responded that the evidence in the record was inconsistent with Appellant's testimony. Neither the medical records nor documentation in the PA request

reflected Appellant's CVA or stroke, or that it was a contributing factor in her need for PCA services. The only limitations documented in the medical record concerned Appellant's ambulation and difficulty with stairs, which was inconsistent with the areas of care requested in the PA request.

Based on the conflicting information in the record, Appellant was given additional time post-hearing to submit additional evidence regarding the CVA and need for PCA services. See Exh. 6. During the record open period, Appellant submitted encounter notes from a 6/2/23 appointment with her rheumatologist, [REDACTED], MD. See Exh. 7. During the visit, Appellant reported extreme pain in her left knee related to her total knee arthroplasty, which was also in the context of chronic pain due to fibromyalgia, as well as osteoarthritis of her right knee. Id. In response to questions regarding Appellant's ability to perform ADLs, Appellant affirmed that she was able to care for herself, and answered affirmatively that she was independent in bathing, dressing, and performing errands. On examination, Dr. [REDACTED] noted that Appellant was in no acute distress, limping, and ambulated with a walker or wheelchair. Id. at 8. Dr. [REDACTED] noted that Appellant's hand grips were equal and full strength with full range of motion; that her shoulders had full range flexion and abduction with no pain; and no incontinence. Dr. [REDACTED] found that Appellant's diagnosis of fibromyalgia/chronic pain syndrome was affecting physical therapy goals in the post operative recovery period. He prescribed a mood stabilizer, and pain and spasm control medications to help with PT goals. The submission did not provide further detail regarding the February 2023 hospitalization, or the presence of symptoms related to a CVA or stroke. Id.

Upon review, the MassHealth representative responded that while the document reflected Appellant had chronic conditions of fibromyalgia and pain, it did not provide further clarification or explanation to support the requested PCA services. See Exh. 8. The MassHealth representative pointed to Appellant's reporting that she was independent with bathing and dressing, as well as the physical examination which showed she had full range of motion. Further, the assessment and plan from the 6/5/23 encounter was focused on treating pain associated with Appellant's post-operative symptoms and continuation of PT services to allow for a complete recovery of the TKR. The MassHealth representative added that if such interventions do not help, other services, including the PCA program, could be assessed at that time. Id.

Findings of Fact

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

1. Appellant is a female MassHealth member under the age of 65 and lives alone in a two-level apartment. (Testimony; Exhibit 4).
2. On May 10, 2023, Appellant's PCM agency submitted an initial PA request to MassHealth seeking PCA services for a one-year period. (Testimony; Exhibit 4).
3. On May 24, 2023, MassHealth denied Appellant's PA request because the information provided failed to show Appellant met the required criteria for being clinically eligible for services, in accordance with 130 CMR 422.403(C). (Testimony; Exhibit 2).
4. Pursuant to its initial evaluation of Appellant on 5/1/23, the PCM agency (consisting of assessments by an RN and OT) identified Appellant's "chronic disabling conditions" as fibromyalgia, TKR or TKA of the left knee, osteoarthritis, weakness, diabetes, and hypertension. (Testimony; Exhibit 4).
5. At the time of the assessment, Appellant was staying on the first floor of her home due to her TKR surgery that took place on March 28, 2023. (Testimony; Exhibit 4).
6. Based on the assessment, the PCM agency sought approval for 25 minutes per-day for PCA assistance with bathing/washing lower extremities and back and transferring in/out of the shower; 5 minutes per-day for assistance with lotion application to the lower extremities and back; and 11 minutes daily for assistance dressing and undressing of the lower body. (Testimony, Exhibit 4).
7. In support of the requests, the PCM agency consistently cited Appellant's inability to "reach feet forward bending," that she is 5'4" 191lbs with "large abdominal girth," that she has decreased strength, fatigue, and limited endurance. (Testimony, Exhibit 4).
8. On [REDACTED] 2023, following a three-day hospitalization, Appellant was discharged home with PT services aimed at helping with ambulation and endurance and to maximize safety and functional mobility through exercises, education, and training. (Exhibits 4 and 5).
9. A renewal for PT services dated 4/3/23, identified Appellant's primary medical concern as "aftercare following joint replacement surgery, left artificial knee" with services to help with fall prevention, wound care, and therapeutic exercises, and with therapeutic goals focused on post-surgery recovery. (Exhibit 4).
10. During encounters with her PCP and rheumatologist on 6/28/23 and 6/5/23, respectively, Appellant reported high levels of pain associated with with her total knee replacement, fibromyalgia, and arthritis; however, she answered affirmatively that she

was able to care for herself and was independent with bathing and dressing. (Exhibits 5 and 7).

11. Medical records list “cerebrovascular accident” under Appellant’s list of “problems” but the records do not specify a date of onset, there is no indication of CVA listed under her “past medical history,” and there is no documentation showing that Appellant was diagnosed with a CVA or stroke during her February 2023 hospitalization. (Exhibits 5 and 7).

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:¹

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416 [which governs the prior authorization requirements].
- (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 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.²

¹ PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.002.

² MassHealth, through its prior authorization process, determines whether a requested 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,

See 130 CMR 422.403(C) (emphasis added).

On review of the evidence submitted in the hearing record and in accordance with the regulations, MassHealth did not err in denying Appellant's PA request. In conducting an initial evaluation, the PCM occupational therapist and nurse reported that Appellant was largely independent in performing most ADLs, but did require lower extremity assistance with bathing, dressing, and lotion application. Despite the evaluation findings, MassHealth denied the PA request due to inadequate documentation to show Appellant's impairments were symptoms of a "permanent or chronic condition." While there is no dispute Appellant has chronic long-term medical conditions, including fibromyalgia, diabetes, and osteoarthritis, MassHealth was unable to determine whether, and to what extent, Appellant's functional limitations resulted her TKR. As MassHealth testified at hearing, any post-operative symptoms and limitations from Appellant's surgery would be expected to improve over the course of recovery and thus would not reflect a chronic or permanent condition, as is required under the PCA program. Further, the evaluation findings were largely inconsistent with Appellant's functional status as reflected in the PT reports and medical records. While the records confirmed Appellant's diagnoses and reflected her reported levels of chronic pain, there was little documentation that to confirm she had impaired range of motion that would limit her ability to dress, bathe, or apply lotion to her lower body independently. Moreover, the testimony offered by Appellant at hearing, presented an entirely different basis for the requested services. Notably, Appellant's daughter testified that prior to February 2023, Appellant was able to function independently despite her chronic pain, fibromyalgia, and pre-existing conditions. It was not until she had a stroke, or CVA, in February 2023, according to Appellant's daughter, that Appellant had a significant decline in status. Because the CVA had not been referenced in the PA request, Appellant was granted additional time post-hearing to provide documentation in support of the need for PCA services. During the record open period, Appellant provided notes from a 6/5/23 rheumatology encounter, and which was subsequently reviewed by the MassHealth RN representative. While the notes reflected Appellant's reported levels of pain, consistent with previously submitted medical records, the 6/5/23 encounter did not present new information regarding the February 2023 hospitalization, CVA, or inability to perform ADLs. See Exhs. 7-8. Based on the conflicting information regarding Appellant's level of functioning, as well as the fact that the evaluation was performed while Appellant was recovering from a TKR, there was insufficient evidence to demonstrate Appellant met the prerequisites to qualify for PCA services. See 130 CMR 422.403(C). Appellant did not meet her burden of proof to establish that MassHealth erred in denying her PA request. See 130 CMR 422.403(C).

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. See 130 CMR 450.204(A).

Based on the foregoing, 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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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