

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2307955
Decision Date:	11/30/2023	Hearing Date:	10/13/2023
Hearing Officer:	Mariah Burns		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary-Jo Elliot, RN for 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:	Prior Authorization, Personal Care Attendant Services, MassHealth Action
Decision Date:	11/30/2023	Hearing Date:	10/13/2023
MassHealth's Rep.:	Mary-Jo Elliot, RN	Appellant's Rep.:	Pro se
Hearing Location:	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 August 21, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on September 6, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

The appeal issue is whether MassHealth was acting within its discretion in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is an adult MassHealth CommonHealth member under the age of 65 who appeared telephonically at hearing. MassHealth was represented by a Clinical Nurse Reviewer for Optum, who manages MassHealth's PCA program and also appeared by telephone. The following is a summary of the evidence and testimony presented at hearing:

The appellant suffers from a primary diagnosis of osteoarthritis with additional diagnoses including nerve damage, Crohn's disease, degenerative disc disease, and neurogenic bladder. The appeal involves a reevaluation request from the appellant's personal care management (PCM) agency for 68 hours and 15 minutes of PCA hours per week, which is the amount of time the appellant was previously receiving. MassHealth made only one modification in the area of meal preparation. The appellant requested 105 minutes per day for the task, and MassHealth modified the request by approving 90 minutes per day. MassHealth ultimately approved the appellant for 66 hours and 30 minutes per week of PCA services.

The MassHealth representative reported that 90 minutes per day is the typical amount of time MassHealth provides for someone with the appellant's needs, and it is the amount of time she was allotted in the previous year.

The appellant explained that she agreed that 90 minutes per day was sufficient for meal preparation, but that she requires the modified time in other areas, particularly feeding. She reported that she requires complete assistance with feeding, and that she is unable to hold a utensil up to her mouth and feed herself. The MassHealth representative responded that time for feeding was not requested by the PCM, and that, as a result, MassHealth is unable to provide time not requested for a particular task. She reported that this is beyond the scope of the prior authorization request, and that she is unable to evaluate the appellant's needs beyond what is provided in the clinical documentation.

Findings of Fact

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

1. The appellant is an adult MassHealth CommonHealth member under the age of 65 who is currently receiving PCA services. Testimony, Exhibit 6, Exhibit 4.
2. MassHealth received a prior authorization request submitted by the PCM on the appellant's behalf requesting 68 hours and 15 minutes per week in PCA services. The submission specifically requested 105 minutes per day for meal preparation and no time for feeding. Exhibit 5 at 21, 31, 39.

3. On August 21, 2023, MassHealth modified the appellant's prior authorization request to 66 hours and 30 minutes of PCA services. The only modification made was in the area of meal preparation, which was decreased to 90 minutes per day. Exhibit 1, Exhibit 6 at 32.
4. The appellant filed a timely appeal on September 6, 2023. Exhibit 2.
5. The appellant agrees that she requires 90 minutes per day for meal preparation. Testimony.
6. The appellant is specifically asking for more PCA time to be allowed in the area of feeding, which is a task that was not requested by the PCM agency. Testimony, Exhibit 6 at 21.
7. MassHealth took no adverse action against the appellant in regard to any PCA time for feeding. *Id.*

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹
- (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.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be medically necessary if:

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

- (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...

...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.

130 CMR 450.204(A)-(B).

In the case of PCA services, the prior authorization request is “a request to initiate, continue, or adjust a member’s prior authorization for PCA services...that the [Personal Care Management (PCM)] agency must submit to the MassHealth agency...” 130 CMR 422.402. A PCM agency is a third-party that contracts with MassHealth to provide PCM functions to members. *Id.* The MassHealth regulations require PCMs to assist members with submitting prior authorization requests, and in circumstances where a member is currently receiving benefits, must abide by the following:

B) Adjustment of Current Prior Authorization. Prior authorization requests to increase or decrease the number of hours of PCA services must be submitted to the MassHealth agency by the member’s PCM agency in writing within 30 calendar days of the member or surrogate request, and include:

- (1) a copy of the original prior authorization request and PCA evaluation;
- (2) a written summary of the specific adjustment requested that includes the reason for the adjustment and the specific ADLs or IADLs for which an increase or decrease in PCA services is being requested, including the number of units, the number of hours, and the duration of time for which the adjustment is being requested; and
- (3) a letter from the member’s physician, nurse practitioner, or physician assistant stating that the need for an adjustment in the member’s authorized number of hours of PCA services is a result of changes in the member’s medical condition, functional status, or living situation that affects the member’s ability to perform ADLs and IADLs without physical assistance. The letter must also describe these conditions. The letter must include the length of time for which the adjustment is

required.

(C) Continuation of PCA Services. To ensure the continuation of PCA services, PCM agencies must request prior authorization from the MassHealth agency at least 21 calendar days before the expiration date of the current prior authorization period. The PCM agency must include in its prior authorization request the documentation described in 130 CMR 422.416(A). The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior authorization request at least 21 calendar days prior to the expiration of the current prior authorization period. If the MassHealth agency does not receive the new prior authorization request at least 21 calendar days before the expiration date, the MassHealth agency may stop payment for PCA services after the expiration date.

130 CMR 422.416. Here, the action that was taken by MassHealth was a modification of time requested for daily meal preparation. However, after hearing, it became clear that the appellant agrees that she does not require more time for meal preparation, and is, instead, challenging the total amount of time reduced by MassHealth. She reports that she requires complete assistance for feeding, which is time that was not requested by the appellant's PCM agency, and argues that she should be given time for that task.

Unfortunately, this appeal offers no mechanism to approve the appellant for more hours than were requested by the PCM agency for a given task, as MassHealth did not take an adverse action in that instance. *See generally*, 130 CMR 610.032(A)(3) and (5) (Bases for fair hearing included *MassHealth agency* action to restrict a member's assistance and *MassHealth agency* determinations regarding scope and amount of assistance). In other words, the Board of Hearings only has jurisdiction in determining whether MassHealth actions were made in accordance with the regulations, not over actions of a PCM agency. Where the appellant argues that the PCM agency did not request the proper amount of time for particular tasks, her issue is with the PCM agency, not with MassHealth. Although MassHealth did take an adverse action in reducing the amount of time requested for meal preparation, the appellant stated that she accepts the amount of time given by MassHealth and does not challenge the hours for meal preparation. Instead, she asks that the modified time be allowed to be use for other tasks not requested by the PCM agency. Because MassHealth did not take an adverse action against other tasks, this hearing officer is without authority to honor the appellant's request. *See* 130 CMR 610.082(C) ("The decision must be made in accordance with the law").

As the appellant agrees with the validity of MassHealth's decision to modify her requested hours for meal preparation, and her remaining argument is based on an action by an entity other than MassHealth, there is no basis for this appeal to be ruled in the appellant's favor. For the foregoing reasons, the appeal is hereby denied.²

² The appellant may, at any time, request an adjustment of her PCA hours pursuant to 130 CMR

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

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

422.416(B). This hearing officer makes no finding as to whether such an adjustment should be allowed.