

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part Denied in part	Appeal Number:	2308700
Decision Date:	12/18/2023	Hearing Date:	10/27/2023
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Donna Burns, RN



*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:	Approved in part Denied in part	Issue:	Prior Authorization - PCA
Decision Date:	12/18/2023	Hearing Date:	10/27/2023
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Pro se
Hearing Location:	Quincy		

Authority

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

Jurisdiction

Through notice dated September 5, 2023, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed for this appeal in a timely manner on September 22, 2023 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. MassHealth submitted a packet of documentation which includes a copy of the subject prior authorization request and PCA nursing evaluation (Exhibit B). Appellant filed only her Fair Hearing Request form (Exhibit A).

The MassHealth representative testified that Appellant is a young adult with a primary diagnosis of [REDACTED]

A Prior Authorization (PA) request for a Personal Care Attendant (PCA) initial evaluation was submitted to MassHealth on Aug 21, 2023 by CLW for 24 hours and 15 minutes of day/evening hours for 32 school weeks and 15 hours and 0 minutes of day/evening hours for 20 vacation weeks (0 hours at night for one year).

MassHealth modified this request on September 5, 2023 to 16 hours and 45 minutes of day/evening hours for 32.28 school weeks and 15 hours of day/evening hours for 20 vacation weeks (0 hours at night) for one year. Dates of service: Sept 5, 2023 to Sept 4, 2024.

MassHealth made 3 modifications during school weeks; vacation weeks were approved as requested.

Mobility: (Exhibit B, page 17). Appellant requested 5 minutes 4x/day 5days/week for school weeks. MassHealth modified to 0 because this time was approved under other special needs at 5x2x5.

Other healthcare needs: (Exhibit B, page 30). Appellant requested 10 minutes 4x/day 5days/week for school weeks. MassHealth modified to 0 because a clinical review of the documentation submitted does not indicate the medical necessity of the services requested (130 CMR 450.204 (A)(1)) as assistance with computer/tablet while at college is not covered under the PCA program (130 CMR 422.410(A)).

Other special needs: (Exhibit B, page 35). Appellant requested 20 minutes 2x/day 5days/week for school weeks. MassHealth modified to 5 minutes 2x/day 5 days/week for assistance to car only. MassHealth modified because a clinical review of the documentation submitted does not indicate the medical necessity of the services requested (130 CMR 450.204 (A)(1)) and assistance to maneuver on campus while at college is not covered under the PCA program (130 CMR 422.410(A)).

Appellant testified that she has not been able to find services that would be able to assist her while she attends college. She was hoping she could obtain such assistance through the PCA

program. Appellant testified that she has no control over her limbs and is dependent on others for transfers, mobility, setting her up at her computer/tablet, eating and going to the bathroom.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant is a young adult with a primary diagnosis of [REDACTED]
2. Appellant has no control over her limbs and is dependent on others for (among other things) transfers, mobility, setting her up at her computer, eating and going to the bathroom.
3. A Prior Authorization (PA) request for a Personal Care Attendant (PCA) initial evaluation was submitted to MassHealth on Aug 21, 2023 by CLW for 24 hours and 15 minutes of day/evening hours for 32 school weeks and 15 hours and 0 minutes of day/evening hours for 20 vacation weeks (0 hours at night for one year).
4. MassHealth modified this request on September 5, 2023 to 16 hours and 45 minutes of day/evening hours for 32.28 school weeks and 15 hours of day/evening hours for 20 vacation weeks (0 hours at night) for one year. Dates of service: Sept 5, 2023 to Sept 4, 2024.
5. MassHealth made 3 modifications during school weeks; vacation weeks were approved as requested.
6. Mobility - (Exhibit B, page 17): Appellant requested 5 minutes 4x/day 5days/week for school weeks. MassHealth modified to 0 because this time was approved under other special needs at 5x2x5.
7. Other healthcare needs - (Exhibit B, page 30): Appellant requested 10 minutes 4x/day 5days/week for school weeks. MassHealth modified to 0 because a clinical review of the documentation submitted does not indicate the medical necessity of the services requested and assistance with computer while at college is not covered under the PCA program.
8. Other special needs - (Exhibit B, page 35): Appellant requested 20 minutes 2x/day 5days/week for school weeks. MassHealth modified to 5 minutes 2x/day 5 days/week for assistance to car only. MassHealth modified because a clinical review of the

documentation submitted does not indicate the medical necessity of the services requested and assistance to maneuver on campus while at college is not covered under the PCA program.

Analysis and Conclusions of Law

130 CMR 422.411: Covered Services (A) MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.

A review of the controlling regulations supports MassHealth's position that assisting Appellant while at college with setting up her computer/tablet is neither a covered Activity of Daily Living (ADL) nor an Instrumental Activity of Daily Living (IADL) under the MassHealth PCA program. The regulations do not, however, support MassHealth's position that assisting Appellant with mobility while at college while at college is not covered.

Covered ADL's and IADL's are specifically defined by regulation 130 CMR 422.410 (emphasis supplied):

Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 or grooming: physically assisting a member with bathing, personal hygiene, or grooming;*
- (4) dressing: 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 or 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 PCA services; and*
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.*

Appellant relies on a wheelchair for mobility (a prescribed piece of durable medical equipment) and requires physical assistance in using this equipment while at college to meet her mobility needs. Such is covered by 130 CMR 422.410(A)(1).

Assistance with setting up Appellant with her tech devices such as a computer/tablet is not listed in the above-cited regulations; therefore, it is not covered under the PCA program.

MassHealth's reliance on the non-covered service regulation is misplaced.

130 CMR 422.412: Non-covered 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;*

These restrictions refer to the kinds of services the PCA would be performing, not necessarily what the member is engaged in. For example, a PCA will not be compensated for providing educational service to the member – such as teaching a member how to bath or feed themselves. This does not prevent a PCA from being compensated for providing a covered ADL, such as providing physical assistance with mobility, while the member is seeking to engage in an educational pursuit.

MassHealth's reliance on a lack of medical necessity is also misplaced in this instance.

130 CMR 450.204: Medical Necessity (emphasis supplied):

The MassHealth agency does 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

If assistance with mobility is a covered ADL, there is already a basis to conclude that it is medically necessary. Appellant does not have the use of her limbs and relies on a wheelchair for mobility. To effectively use the prescribed piece of durable medical equipment while on her college campus, she requires additional physical assistance. Here the PCA assistance, together with the wheelchair, provide Appellant with effective mobility; hence, it alleviates or corrects Appellant's condition (loss of the use of her limbs) that cause the malfunction (the ability to ambulate).

For the foregoing reasons, the appeal is APPROVED as to time requested to assist with mobility while Appellant is on her college campus but DENIED as time requested to assist with setting up Appellant her computer/tablet while at college.

Order for MassHealth

Restore time requested under Other Special Needs for assistance with mobility as requested.

Notification of Appellant's Right to Appeal to Court

If Appellant disagree with this decision, Appellant have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, Appellant must file a complaint with the Superior Court for the county where Appellant reside, or Suffolk County Superior Court, within 30 days of Appellant's receipt of this decision.

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 the Enrollment Center gives you any problems with implementing this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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