

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2308782
Decision Date:	11/16/2023	Hearing Date:	10/25/2023
Hearing Officer:	Patricia Mullen		

Appearances for Appellant:



Appearance for MassHealth:


Robin Brown, OT, Optum

Interpreter



*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:	11/16/2023	Hearing Date:	10/25/2023
MassHealth's Rep.:	Robin Brown, OT, Optum	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South (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 18, 2023, MassHealth denied the appellant's request for prior authorization for 15 hours per week in day/evening personal care attendant (PCA) services because MassHealth determined that the appellant does not require physical assistance with two or more activities of daily living (ADLs). (see 130 CMR 450.204; 422.403; 422.410 and Exhibit 1). The appellant filed this appeal in a timely manner on September 25, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for prior authorization for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.403; 422.410 in determining that the clinical record indicates that the appellant does not require physical assistance with two or more ADLs.

Summary of Evidence

The appellant testified telephonically through an interpreter and verified her identity. The appellant's daughter appeared telephonically as the appellant's authorized representative. MassHealth was represented telephonically by an occupational therapist reviewer from Optum, the contracted agent of MassHealth that makes the prior authorization determinations for requests for PCA services. The MassHealth representative stated that on July 18, 2023, the appellant's provider, [REDACTED], submitted an initial request for prior authorization for PCA services seeking 15 hours in day/evening PCA services per week. (Exhibit 6, p. 3). The MassHealth representative stated that MassHealth denied the request by notice dated August 18, 2023, because MassHealth determined that the appellant does not require physical assistance with two or more of the ADLs defined in 130 CMR 422.410(A).

The appellant is under 65 years old and lives alone. (Exhibit 6, p. 10). The appellant's provider reported that the appellant is diagnosed with osteoarthritis, osteoporosis, pain and stiffness, depression, anxiety, and history of panic attacks. (Exhibit 6, pp. 10, 13). The appellant uses a cane to ambulate, has grab bars in her shower, a bar next to the toilet, and emergency call buttons in the bathroom and bedroom. (Exhibit 6, p. 10). The occupational therapist from the appellant's provider agency recommended that the appellant get a tub seat with back. (Exhibit 6, p. 10).

The appellant was evaluated in her home by the OT and by a nurse evaluator from her provider agency. (Exhibit 6, pp. 8-16). The OT reported that the appellant is independent with mobility, transfers, eating, toileting, transfer on/off toilet, transfers in/out bed, transfers in/out shower, medications, and requires moderate assistance with dressing and toenail care. (Exhibit 6, p. 9). The OT noted that the appellant is able to manage stairs. (Exhibit 6, p. 9). The nurse evaluator from the appellant's provider agency wrote that the appellant has full range of motion of her upper extremities and was able to touch her head without difficulty. (Exhibit 6, p. 14).

The appellant's provider requested no time for PCA assistance with mobility, transfers, passive range of motion (PROM), eating, and toileting. (Exhibit 6, pp. 17-31). The appellant's provider requested time for PCA assistance with showering, toenail care and applying lotion, dressing/undressing, and filling a medication box. (Exhibit 6, pp. 17-31).

The appellant's provider requested 10 minutes a day for PCA assistance with showering, including routines transfers. (Exhibit 6, p. 20). The nurse evaluator from the provider agency

noted that the appellant requires assistance with washing her lower body; the nurse reported that the appellant has a self care deficit and lack of motivation due to depression and anxiety. (Exhibit 6, p. 21).

The MassHealth representative testified that no time was allowed for PCA assistance with showering as the appellant is independent with transfers into and out of the shower, has full range of motion of her upper extremities, and the use of a hand held shower would assist with cleaning her lower body. The MassHealth representative stated that the appellant has sufficient functional ability to perform this task without assistance. The MassHealth representative stated that the occupational therapy services, covered by MassHealth, could come into the appellant's home and determine what types of equipment she needs, and the OT could help the appellant learn how to use equipment such as a hand held shower and shower bench or tub seat.

The appellant's representative stated that the appellant would not use a hand held shower or tub seat. The appellant's representative stated that she comes in the afternoon to help the appellant, but the appellant does not always want the help and, due to her depression, she stays in bed all day and does not come out of her room. The appellant's representative is concerned that the appellant is developing a fungus on her back from not washing properly. The appellant's representative noted that the appellant has back spasms 2 to 3 times a week that limit her ability to move until her medications take effect.

The appellant's provider requested 5 minutes a week for toenail care, and 3 minutes a day to apply lotion. (Exhibit 6, p. 22). The MassHealth representative stated that MassHealth denied the time requested for PCA assistance with these activities. The MassHealth representative stated that the toenail care is not a daily need and is not qualified as an activity of daily living. The MassHealth representative testified that the appellant has the functional ability to apply lotion and there are less costly options for applying lotion. The MassHealth representative stated that there are long handled devices with sponges on the end that can be used for lotion application. The MassHealth representative stated further that there is nothing in the record indicating that lotion application is recommended by the appellant's physician as a medical need. The MassHealth representative noted again that the appellant could have an occupational therapist evaluation in her home and the OT could teach the appellant how to use devices, such as a long handled lotion applicator, to assist with daily needs.

The appellant's representative stated that the appellant is overweight and there is fungus in the folds of her back. The appellant's representative stated that the appellant uses over the counter eczema lotion and medicated shampoo.

The appellant's provider requested 10 minutes a day for PCA assistance with dressing, and 5 minutes a day for PCA assistance with undressing. (Exhibit 6, p. 24). The nurse evaluator from the appellant's provider agency wrote that the appellant requires assistance with lower body

dressing/undressing and putting on and removing footwear. (Exhibit 6, p. 24). The MassHealth representative stated that MassHealth denied time requested for PCA assistance with dressing and undressing. The MassHealth representative stated that the appellant is independent with many tasks, has full range of motion in her upper extremities, has the fine motor skills to eat and sign her name, and has the functional ability to dress and undress herself. The MassHealth representative stated that there are less costly options to assist with lower body dressing, if necessary, including a dressing stick, long handled shoe horn, and sock aid. The MassHealth representative noted that occupational therapist assistance would be helpful in this area too and could teach the appellant to use the devices necessary for any assistance with dressing/undressing.

The appellant's representative stated that although the appellant has full mobility, she sometimes has panic attacks when pulling a shirt on over her head and face. The appellant's representative stated that the appellant usually stays in her pajamas all day and she can put those on herself. The appellant's representative stated that when the appellant does not take her medications, it can be painful for her to dress and undress herself.

The appellant's provider requested 5 minutes a week for PCA assistance with filling the appellant's medication box. (Exhibit 6, p. 28). The nurse evaluator from the provider agency wrote that the appellant is able to take the medications from the box, but needs verbal cues and reminders. (Exhibit 6, p. 28). The MassHealth representative stated that MassHealth denied the time requested for PCA assistance with setting up the medication box, because the appellant has the fine motor skills to set up the box herself. The MassHealth representative stated further that cues and reminders are not covered PCA tasks.

The appellant's representative stated that the appellant does not take her medications at the right time.

The appellant's representative stated that the appellant needs help cleaning her house, noting that the appellant is in pain every day and that limits her from doing things. The appellant's representative stated that she was hoping the PCA could check in on the appellant and be sure that she has not fallen, is taking her medications, and is being taken care of.

The MassHealth representative advised that the appellant get a Life Alert alarm system and look into visiting nurses for medication administration. The MassHealth representative stated that PCA services provide hands on assistance for members with functional limitations, and checking on a member to ensure they are well and safe is not a covered task for the unskilled PCA.

The appellant's provider requested a total of 3.5 hours per week for PCA assistance with ADLs and 11.5 hours per week for PCA assistance with instrumental activities of daily living (IADLs). (Exhibit 7, pp. 17-31). The MassHealth representative stated that MassHealth did not reach the determination of time requested for assistance with IADLs, because the appellant does not

need PCA assistance with at least 2 ADLs.

Findings of Fact

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

1. On July 18, 2023, the appellant's provider, [REDACTED] submitted an initial request for prior authorization for PCA services seeking 15 hours in day/evening PCA services per week; the provider requested 3.5 hours a week for assistance with ADLs and 11.5 hours per week for assistance with IADLs.
2. MassHealth denied the request by notice dated August 18, 2023, because MassHealth determined that the appellant does not require physical assistance with two or more ADLs.
3. The appellant is under 65 years old and lives alone.
4. The appellant is diagnosed with osteoarthritis, osteoporosis, pain and stiffness, depression, anxiety, and history of panic attacks; the appellant uses a cane to ambulate, has grab bars in her shower, a bar next to the toilet, and emergency call buttons in the bathroom and bedroom; the occupational therapist from the appellant's provider agency recommended that the appellant get a tub seat with back.
5. The appellant was evaluated in her home by the OT and by a nurse evaluator from her provider agency.
6. The appellant is independent with mobility, transfers, eating, oral care, toileting, transfer on/off toilet, transfers in/out bed, transfers in/out shower, medications, and requires moderate assistance with dressing and toenail care.
7. The OT noted that the appellant is able to manage stairs, has full range of motion of her upper extremities and is able to touch her head without difficulty.
8. The appellant's provider requested no time for PCA assistance with mobility, transfers, PROM, eating, and toileting.
9. The appellant's provider requested time for PCA assistance with showering, toenail care and applying lotion, dressing/undressing, and filling a medication box.
10. The appellant's provider requested 10 minutes a day for PCA assistance with showering, including routines transfers; the appellant is independent with transfers.

11. The nurse evaluator from the provider agency noted that the appellant requires assistance with washing her lower body; the nurse reported that the appellant has a self care deficit and lack of motivation due to depression and anxiety.
12. The appellant does not always want help with activities and, due to her depression, she stays in bed all day and does not come out of her room.
13. The appellant has back spasms 2 to 3 times a week that limit her ability to move until her medications take effect.
14. The appellant's provider requested 5 minutes a week for toenail care, and 3 minutes a day to apply lotion.
15. The appellant's provider requested 10 minutes a day for PCA assistance with lower body dressing and putting on footwear, and 5 minutes a day for PCA assistance with lower body undressing and taking off footwear.
16. The appellant sometimes has panic attacks when pulling a shirt on over her head and face.
17. The appellant is able to put on and take off her pajamas.
18. The appellant's provider requested 5 minutes a week for PCA assistance with filling the appellant's medication box.
19. The appellant is able to take the medications from the box, but needs verbal cues and reminders.

Analysis and Conclusions of Law

MassHealth covers PCA 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 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.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for prior authorization to be approved. MassHealth 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth 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.

(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 MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A)-(C)).

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.

(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 PCM 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 PCA 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.

(130 CMR 422.410).

Noncovered 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.

(130 CMR 422.412).

130 CMR 422.403(C)(3) states that MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when the member, as determined by the personal care agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A). The appellant's provider has requested PCA assistance with the tasks of showering, toenail care, lotion application, dressing/undressing, and prefilling a medication box.

The appellant's main concern appears to be for assistance with the IADL of cleaning the home and with checking on the appellant to be sure she is safe and ensure she is taking her medications. The appellant's provider requested 8.75 hours a week for PCA assistance with the IADL of meal preparation alone, which is more than the entire time requested per week for PCA assistance with ADLs (3.5 hours). The need for assistance with IADLs is not even reached until the need for physical assistance with 2 or more ADLs is established. Further, safety monitoring, reminders, and cueing are not covered PCA tasks, pursuant to the above regulations.

The appellant is independent with mobility, transfers, eating, oral care, toileting, transfer on/off toilet, transfers in/out bed, transfers in/out shower, medications, and requires moderate assistance with dressing and toenail care.

The appellant's provider requested 10 minutes a day for PCA assistance with showering, including routines transfers. The appellant is independent with transfers into and out of the shower and no time should be requested for assistance with this task. The appellant has full range of motion in her upper extremities, but the provider noted that she needs assistance with lower body washing. It was noted that the appellant does not want to use a shower chair or bench, but such equipment and a hand held shower would be the less costly alternative for this task, rather than PCA assistance. The nurse reported that the appellant has a self care deficit and lack of motivation due to depression and anxiety. The PCA program provides hands on physical assistance, at the direction of the member, with tasks that the member cannot perform due to functional limitations. The appellant has sufficient functional ability to perform this task without assistance. Occupational services, covered by MassHealth, could come into the appellant learn how to use equipment such as a hand held shower and shower bench or tub seat. The appellant has the physical ability to wash herself, with the appropriate equipment, in the shower. MassHealth's denial of the time requested for PCA assistance with showering is upheld and the appeal is denied as to this issue.

5 minutes a week for toenail care is not a daily task and does not meet criteria, in and of itself, as an ADL meeting the criteria of the required two ADLs necessary to support the requirement for PCA assistance. The appellant's provider also requested 3 minutes a day to apply lotion. The appellant has full range of motion in her upper extremities and there are less costly options for applying lotion to the lower body, including long handled devices with sponges on the end that can be used for lotion application. The appellant has the physical ability to apply lotion, with the appropriate equipment. MassHealth's denial of time for PCA assistance with weekly toenail care and applying lotion is upheld and the appeal is denied as to this issue.

The nurse evaluator from the appellant's provider agency wrote that the appellant requires assistance with lower body dressing/undressing and putting on and removing footwear. The appellant is independent with many tasks, has full range of motion in her upper extremities, has the fine motor skills to eat and sign her name, and has the functional ability to dress and undress herself. There are less costly options to assist with lower body dressing, if necessary, including a dressing stick, long handled shoe horn, sock aid. An occupational therapist assistance would be helpful in this area and could teach the appellant to use the devices necessary for any assistance with dressing/undressing. The fact that the appellant has panic attacks when pulling a shirt over her head is not a functional impairment that requires PCA hands on assistance. It was noted at the hearing that the appellant wears clothing during the day that she is able to put on and take off herself. It was also noted that when the appellant takes her medications, she is able to perform the task. MassHealth's denial of time for PCA assistance with dressing/undressing is upheld and the appeal is denied as to this issue.

The appellant's provider requested 5 minutes a week for PCA assistance with filling the appellant's medication box. The appellant is physically able to take the medications from the box, but needs verbal cues and reminders. The appellant has the fine motor skills to set up the box herself. The PCA works at the direction of the member and, as an unskilled caregiver, cannot be responsible for reminding a member to take medications. Reminders are not a covered PCA task. Further the appellant is independent for eating, brushing teeth, among other things, and therefore has the functional ability to fill her medication box and take her medications. The record does not support that the appellant requires physical assistance with the ADL of assistance with medications. MassHealth's denial of time requested for PCA assistance with medications is upheld and the appeal is denied as to this issue.

Based on the clinical record, the appellant does not require physical assistance with at least 2 ADLs. Because physical assistance with 2 or more ADLs is required for MassHealth coverage of PCA services, MassHealth's action is upheld and the 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.

Patricia Mullen
Hearing Officer
Board of Hearings

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

[REDACTED]