

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2311081
Decision Date:	3/11/2024	Hearing Date:	02/14/2024
Hearing Officer:	Marc Tonaszuck	Record Open to:	03/06/2024

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN, 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:	3/11/2024	Hearing Date:	02/14/2024
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Mother/HCP
Hearing Location:	Quincy Harbor South	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 09/26/2023, MassHealth denied the appellant's prior authorization request for personal care attendant (PCA) services, submitted by her PCA provider, AgeSpan, Inc., because the requested assistance is a duplicate of services available at no cost by a legally obligated entity (130 CMR 422.410; Exhibit 1). On 11/06/2023 the appellant submitted a timely appeal (130 CMR 610.015(B); Exhibit 2). Denial of a request for assistance are valid grounds for appeal (130 CMR 610.032).

A fair hearing was scheduled to take place on 01/19/2023 before the Board of Hearings; however, the appeal representative was unable to provide verification of the appellant's identity. She requested that the hearing be rescheduled for a later date when she was able to provide that verification. A fair hearing took place on 02/14/2024 at which the appellant's representative appeared telephonically, as did the MassHealth representative (Exhibits 3A and 3B).

Action Taken by MassHealth

MassHealth denied the appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, 422.412, and 450.204, in denying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

Both the appellant's representative and the MassHealth representative appeared telephonically. Exhibits were admitted into evidence (1-5).

The MassHealth representative testified that she is a registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that on 08/18/2023, a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA management agency, AgeSpan, Inc. ("provider"). It is a re-evaluation for PCA services. In the PA request for PCA services (Exhibit 4), the provider requested 11.25 day/evening hours per week. Nighttime attendant hours were not requested. The appellant is an adult female who lives in a group home. She has diagnoses that include schizophrenia, diabetes mellitus, obesity, and anxiety (Exhibit 4).

The Optum representative testified that on 09/26/2023 MassHealth denied the PCA request. She testified that there is a new MassHealth regulation that went into effect in 2022. The regulation states that residents of group homes are no longer eligible for PCA services because the group home is required to assist with activities of daily living (ADL's) and instrumental activities of daily living (IADL's) for the residents. The group home where the appellant lives is a provider subject to state licensure. PCA services in such a group home are a non-covered service.

The appellant's mother/HCP testified that the group home is not able to help with bathing, grooming, or dressing the residents, according to the Program Director of the group home (Exhibit 5). The appellant pays her entire social security payment to the group home. The employees of the group home are not permitted to enter the residents' rooms. The group home staff provides grocery shopping, cooking and clean up assistance. They may help the residents carry their clothes to the laundry area, but they will not assist with folding the clothes. They also provide transportation for medical appointments.

The appellant representative testified that the appellant went to the group home in [REDACTED] and since then has been receiving PCA assistance from MassHealth. Now, since MassHealth will not authorize the assistance, the appellant's mother pays out of her own pocket for someone to assist the appellant with activities of daily living.

The hearing officer asked the appellant's representative if the group home is licensed by the Commonwealth and if it bills MassHealth for the appellant's services. The record remained open

until 02/21/2024 for written verification from the group home and until 03/06/2024 for MassHealth's response (Exhibit 6). The appellant made no submission during the record open period.

Findings of Fact

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

1. On 08/18/2023, MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, AgeSpan, Inc. ("provider"). It is a re-evaluation (Testimony; Exhibit 4).
2. In the PA request for PCA services (Exhibit 4), the provider requested 11.25 day/evening hours per week (Testimony; Exhibit 4).
3. No nighttime attendant hours were requested (Testimony; Exhibit 4).
4. The appellant is an adult who lives in a group home. She has diagnoses that include schizophrenia, diabetes mellitus, obesity, and anxiety (Testimony; Exhibit 4).
5. On 09/26/2023 MassHealth denied the PCA request (Testimony; Exhibits 1 and 4).
6. The appellant filed his timely request for a fair hearing with the Board of Hearings on 11/06/2023 (Exhibit 2).
7. A fair hearing was scheduled to take place on 01/19/2024; however, it was rescheduled on the request of the appellant representative because she was unable to verify the appellant's identity on 01/19/2024 (Exhibits 3A and 3B).
8. The fair hearing was rescheduled to 02/14/2024 (Exhibit 3B).
9. The group home where the appellant lives is a provider-operated residential facility subject to state licensure (Testimony; Exhibit 4).
10. The appellant representative requested an opportunity to provide additional documentation in support of the request for PCA services during a record open period. Her request was granted and the record remained open in this matter for her submission until 02/21/2024 (Testimony; Exhibit 6).
11. The appellant representative made no submission during the record open period.

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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 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, or 517.007 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA 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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;***

(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;
(G) surrogates, as defined in 130 CMR 422.402; or (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency

(Emphasis added.)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

The appellant is an adult who lives in a group home. She was determined to be eligible for, and she received, PCA services from MassHealth in the past; however, a re-evaluation request submitted by her provider in August 2023 was denied by MassHealth. MassHealth based its decision on regulations that were recently updated. The regulations include, as a non-covered service, PCA services requested on behalf of a resident "of a provider-operated residential facility subject to state licensure, such as a group home." MassHealth asserted that the group home where the appellant resides is a group home subject to Massachusetts-state licensure and therefore PCA services are a non-covered service.

The appellant representative, who is the appellant's mother and HCP, argued that the group home is not subject to state licensure and that the staff does not provide assistance with ADL's and only limited IADL's. When asked by the hearing officer if she could provide verification that the group home is not subject to state licensure, the appellant representative agreed to do so during a record open period. She failed to make any submission during the record open period.

The appellant did not meet her burden of showing MassHealth's denial is incorrect, or not supported by the facts and the regulations. As such, MassHealth's denial is upheld, and 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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