

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2311610
Decision Date:	2/27/2024	Hearing Date:	12/26/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:
Via telephone
Pro se

Appearance for MassHealth:
Via telephone
Kelly Rayen, R.N.



*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 – PCA Services
Decision Date:	2/27/2024	Hearing Date:	12/26/2023
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	<i>Pro se</i>
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 October 3, 2023, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services from the requested 43 hours and 45 minutes of PCA assistance per week to 35 hours and 30 minutes of PCA assistance per week (Exhibit 1). The appellant filed this appeal in a timely manner on November 7, 2023 (130 CMR 610.015; Exhibit 2). Modification of a PA request is valid grounds for appeal (130 CMR 610.032). The hearing was initially scheduled for December 11, 2023 but was rescheduled once at the appellant's request (Exhibits 5 and 6).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's PA request for personal care services.

Summary of Evidence

The MassHealth representative, who is a registered nurse and clinical appeals reviewer, testified that the appellant is a female in her 50s with primary medical diagnoses including rheumatoid arthritis, osteoarthritis, panic attacks, depression, PTSD, and chronic plantar fasciitis (Testimony, Exhibit 8, p. 8). The MassHealth representative testified that Northeast ARC, a Personal Care Management (“PCM”) services agency, submitted a PA re-evaluation request to MassHealth on the appellant’s behalf on September 10, 2023, seeking 43 hours and 45 minutes of PCA assistance per week. The MassHealth representative testified that by notice dated October 3, 2023, MassHealth modified the requested time to 35 hours and 30 minutes of PCA assistance per week, for one year. The dates of service for this PA request are December 7, 2023 through December 6, 2024 (Testimony, Exhibit 1, p. 2).

The MassHealth representative stated that MassHealth made 6 modifications. First, MassHealth denied the request for assistance with passive range of motion (hereinafter “PROM”) exercises. The appellant requested 10 minutes, 2 times per day, 7 days a week for each of her lower extremities (totaling 280 minutes per week) (Exhibit 8, p. 14). MassHealth denied this request because the appellant’s clinical record indicates that she has sufficient functional ability to move her limbs without physical assistance (Testimony).¹ The MassHealth representative explained that the appellant attends physical therapy and ambulates with an assistive device (cane). She can also navigate stairs with assistance. The MassHealth representative stated that PROM is for consumers who cannot independently move their extremities, such as those with contractures or spasms due to cerebral palsy or a spinal cord injury. Here, the appellant can ambulate, walk, and navigate stairs with some physical assistance, and thus she would be able to perform PROM exercises on her own.

The appellant appeared at the hearing telephonically and testified that if the PCM agency requested time in the PROM category, she must need it. She stated that she requires assistance to negotiate stairs and to walk, and that although she is not in a wheelchair, she requires the use of a cane and someone to walk with her. The appellant explained that 80% of her issues are in her lower back, knees, and feet and at times it is very difficult for her to move her legs; she has back, leg and foot injections scheduled soon. She feels that PCA assistance in this category is needed to prevent contractures. The MassHealth representative responded and stated that given the appellant’s functional ability, the request appears to be for assistance with active range of motion, which is akin to exercise and not covered under MassHealth’s PCA program.

The second modification made was in the meal preparation category (Exhibit 8, p. 23).

¹ The nurse evaluator’s comments are as follows: “No change, Assist with PROM exercises to promote blood flow, release tension, prevent contracture, to treat orthopedic conditions of lower back and lower extremities. Home exercises given from PT” (Exhibit 8, p. 14).

MassHealth modified the requested time of 55 minutes per day, 7 days a week, to 55 minutes per day, 5 days per week, because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with instrumental activities of daily living (IADLs). The MassHealth representative testified that the appellant resides with her spouse and adult child. According to the documentation submitted to MassHealth, “the appellant’s husband works over 40 hours a week and is on call when he is not at work, he is unable to meal prep due to the unpredictable timing of when he leaves for work and when he comes home is not at mealtimes” (Exhibit 8, p. 30). Because of the husband’s work schedule, MassHealth authorized some time for PCA assistance with meal preparation. The appellant clarified that although she is still legally married, she and her husband live separate lives and are more like roommates. He works over 80 hours per week and is tired when he gets home. He does not assist with meal preparation at all. She stated that she does not assist with meal preparation at all – she cannot stand at the stove and cook. Her health problems have increased in the last 3 years, and she has gained a significant amount of weight. Because of this, she tries to eat healthfully. She does not have microwaved food, but rather eats food that is cooked. She likes to eat a smoothie or protein for breakfast, and for lunch and dinner eats protein, vegetables, and sometimes a starch as well.

The third modification made was in the laundry category (Exhibit 8, p. 32). MassHealth modified the requested time of 60 minutes per week to 45 minutes per week because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with IADLs. The appellant testified that she needs more than 60 minutes of weekly assistance for laundry. She does not assist with laundry at all. The dirty clothes are located on the second floor of her home, and the washer and dryer are located two floors down in the basement. She is unable to carry laundry down two flights of stairs while using a cane. The MassHealth representative inquired whether the appellant can sit and fold or sort laundry; the appellant responded by stating that she does not participate in any part of the laundry process.

The appellant clarified that it takes approximately two hours for a wash and dry cycle to be completed. The MassHealth representative explained that washing and drying time is not factored into the time for PCA assistance with laundry. Rather, MassHealth only considers the “hands-on” tasks, such as carrying laundry downstairs, switching laundry from the washer to the dryer and carrying the laundry back upstairs. The appellant explained that she generates a lot of laundry; she changes her clothes and sheets more often than most people. She indicated that the washer and dryer run daily in her home, and that she will insist that the PCA start a partial load of laundry if there are dirty items in the bathroom.

The fourth modification made was in the housekeeping category (Exhibit 8, p. 32). MassHealth modified the requested time of 45 minutes per week to 30 minutes because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with IADLs. The MassHealth representative clarified that housekeeping assistance is authorized only for the consumer’s personal space. The appellant testified that 45 minutes per week amounts to 6.42 minutes each day. She stated that because of her obsessive-compulsive

disorder, housekeeping is performed in her own personal space for approximately 60 minutes per day. The MassHealth representative explained that the expectation is that the appellant's spouse would assist in housekeeping. The appellant reiterated that she and her spouse live separate lives and she does not ask him for assistance.

The fifth modification made was in the shopping category (Exhibit 8, p. 33). MassHealth denied the requested time of 30 minutes per week because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with IADLs. The appellant testified that she cannot drive because of her mental health conditions and must be driven everywhere, including to the pharmacy. She stays in the vehicle upon arrival and her PCA/son will pick up her medications. As for food shopping, the appellant explained that she likes to pick out her own food and can do so if there is a scooter available in the grocery store; the time in the grocery store far exceeds 30 minutes. She stated that her spouse does not grocery shop or run errands for her. Rather, her son/PCA runs errands for her and goes to the grocery store multiple times per week to pick up items she needs or that need to be replaced.

The sixth modification made was in the MD transport category. MassHealth modified the requested time of 172 minutes of assistance per week to 130 minutes per week because the time requested for assistance with transportation is longer than ordinarily required for someone with the appellant's physical needs. The only modification made was to the number of visits to the appellant's physical therapy provider. Specifically, MassHealth modified the requested 64 visits to 20 visits. The MassHealth representative explained that MassHealth generally approves 20 physical therapy visits per prior authorization period. If additional visits are required, the consumer's physical therapist would need to submit a new prior authorization request for such. Here, it does not appear that the appellant's physical therapist has done so. MassHealth approved the other time requested for assistance with the appellant's medical transportation.

The appellant explained that there are additional physicians that are not listed in the current evaluation. The MassHealth representative explained that the appellant must ensure that her PCM agency has a current list of her physicians because MassHealth cannot authorize transportation time to providers that are not listed. She noted that the appellant can opt to have her PCM agency seek an adjustment to address this issue. The appellant clarified that she goes to one physical therapy office but has two different therapists there; one works on her back and knees, the other on her feet. She sees these therapists when they are available.

Findings of Fact

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

1. The appellant is a female in her 50s and is a MassHealth member (Exhibit 3).
2. The appellant's medical diagnoses include rheumatoid arthritis, osteoarthritis, panic attacks, depression, PTSD, and chronic plantar fasciitis (Exhibit 8, p. 8.).
3. The appellant resides with her spouse and her adult son (who is also her PCA).
4. The appellant's PCM services agency submitted a PA re-evaluation request to MassHealth on the appellant's behalf on September 10, 2023, seeking 43 hours and 45 minutes of PCA assistance per week (Exhibit 8, p. 3).
5. By notice dated October 3, 2023, MassHealth modified the requested time to 35 hours and 30 minutes of PCA assistance per week, for one year (Exhibit 1).
6. The dates of service at issue here are December 7, 2023 through December 6, 2024.
7. The appellant requested 10 minutes, twice a day, every day for assistance with PROM exercises for each of her lower extremities, for a total of 280 minutes per week (Exhibit 8, p. 14).
8. MassHealth denied this request because the appellant can independently move her lower extremities.
9. The appellant requested 55 minutes per day, 7 days per week, for assistance with meal preparation; MassHealth modified the time for meal preparation to 55 minutes per day, 5 days per week. (Exhibit 8, p. 30).
10. The appellant requested 60 minutes per week for assistance with laundry; MassHealth modified the request to 45 minutes per week (Exhibit 8, p. 32).
11. The appellant's washer and dryer are in the basement of her home.
12. The appellant requested 45 minutes per week for assistance with housekeeping; MassHealth modified the request to 30 minutes per week (Exhibit 8, p. 32).
13. The appellant requested 30 minutes per week for assistance with shopping; MassHealth denied this request (Exhibit 8, p. 33).

14. The appellant attends grocery shopping with her PCA if there is scooter availability within the store.
15. The appellant requested 172 minutes per week for assistance with medical transportation; MassHealth modified the request to 130 minutes per week (Exhibit 8, p. 34).
16. MassHealth's modification was related to the number of visits to the appellant's physical therapy provider and involved a reduction from 64 visits to 20 visits.
17. MassHealth has currently authorized the appellant for 20 physical therapy visits.
18. MassHealth has not received a prior authorization request from the appellant's physical therapy provider for any additional visits.

Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (IADLs) as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member 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 or grooming; (d) dressing or undressing; (e) range-of-motion exercises; (f) eating; and (g) toileting; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the instrumental activities of daily living (130 CMR 422.402).

Pursuant to 130 CMR 422.410(C), in determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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.

Further, pursuant to 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;
- (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.

Pursuant to 130 CMR 450.204(A), 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 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 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.

At issue in this appeal were modifications of time requested for PCA assistance for the appellant with the following ADLs and IADLs: PROM exercises, meal preparation, laundry, shopping, housekeeping, and medical transportation.

PROM

The appellant requested 10 minutes of assistance, every day, for PROM exercises for each of her lower extremities (totaling 280 minutes per week). MassHealth denied the request because the appellant's clinical record indicates that she has sufficient functional ability to move her limbs independently; she attends physical therapy and ambulates with an assistive device. The appellant disagreed with this modification and argues that the nurse evaluator feels that she needs this assistance to prevent contractures and to help with her orthopedic issues. The record does not sufficiently support the appellant's position. Because the appellant can move her limbs and joints independently, MassHealth has persuasively argued that the appellant's request is appropriately characterized as a request for assistance with active range of motion exercises, not passive. Assistance with active range of motion exercises is akin to assistance with exercise and is not one of the specific activities for which MassHealth will authorize PCA assistance (130 CMR 422.410(A)). MassHealth has provided adequate support for its determination here, and this portion of the appeal is denied.

Meal Preparation

The appellant requested 55 minutes per day, 7 days per week, for assistance with meal preparation (Exhibit 8, p. 23). MassHealth modified the request to 55 minutes per day, 5 days per week, because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with IADLs. MassHealth acknowledged that the appellant's spouse works long hours, and thus authorized some time for PCA assistance with this task. The appellant disputes this modification, arguing that her husband does not assist with meal

preparation due to his work schedule and the fact that they live as roommates rather than a married couple. Per 130 CMR 422.401(C), when a member is living with family members, the family members will assist with most IADLs. A spouse is included in MassHealth's definition of a family member (130 CMR 422.402). Therefore, because the appellant and her husband still live together and are legally married, MassHealth assumes that he will assist with this task. MassHealth persuasively points out that it has acknowledged the spouse's work schedule and has provided a significant authorization of time for PCA assistance with meal preparation. MassHealth has provided adequate support for its determination here, and this portion of the appeal is denied.

Laundry

The appellant requested 60 minutes per week for assistance with laundry. MassHealth modified the request to 45 minutes per week because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with IADLs. The appellant disputes this modification and argues that she needs more than 60 minutes of assistance because neither she nor her husband assists with laundry, and because laundry is done daily in her home. As noted above, per 130 CMR 422.401(C), when a member is living with family members, the family members will help with most IADLs. Further, a spouse is included in MassHealth's definition of a family member (130 CMR 422.402). Thus, because the appellant and her husband still live together and are legally married, MassHealth assumes that he will assist with this task. Further, the appellant did not state (or demonstrate) that she is unable to assist with some of the laundry tasks, including sorting and folding. Additionally, although the appellant indicated that laundry is done daily, she did not specify how many loads she alone generates. Lastly, the appellant conceded that the PCA sometimes washes and dries a partial load of laundry – this practice is inefficient and does not satisfy the requirements of MassHealth's medical necessity regulation. The appellant has not demonstrated that she needs more than 45 minutes per week for assistance with laundry, and this portion of the appeal is denied.

Housekeeping

The appellant requested 45 minutes per week for assistance with housekeeping. MassHealth modified the request to 30 minutes per week because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with IADLs. The appellant disputes this modification and argues that her husband does assist with housekeeping and that housekeeping tasks (in her personal space) take 60 minutes per day due to her obsessive-compulsive disorder diagnosis. The record does not sufficiently support the appellant's position. As noted above, per 130 CMR 422.401(C), when a member is living with family members, the family members will help with most IADLs. Further, a spouse is included in MassHealth's definition of a family member (130 CMR 422.402). Thus, because the appellant and her husband still live together and are legally married, MassHealth assumes that he will assist with this task. Further, the appellant has not documented an obsessive-compulsive disorder

diagnosis, nor that any additional housekeeping assistance is necessary because of this diagnosis. The appellant has not demonstrated that she needs more than 30 minutes per week for assistance with housekeeping, and this portion of the appeal is denied.

Shopping

The appellant requested 30 minutes per week for shopping. MassHealth denied because the appellant resides with family members and MassHealth expects family members to provide non-reimbursable assistance with IADLs. The appellant disputes this modification and argues that her spouse does not shop at all, and that her PCA runs errands and shops for her multiple times per week. She often goes with her PCA to the grocery store, as she is particular about her food choices and likes to choose the items herself. The record does not sufficiently support the appellant's position. As noted above, per 130 CMR 422.401(C), when a member is living with family members, the family members will help with most IADLs. Further, a spouse is included in MassHealth's definition of a family member (130 CMR 422.402). Thus, because the appellant and her husband still live together and are legally married, MassHealth assumes that he will assist with this task. Further, the appellant conceded at hearing that she assists with shopping; she goes to the grocery store with the PCA and likes to pick out her own food. The appellant has not demonstrated that any time for assistance with shopping is warranted, and this portion of the appeal is denied.

MD Transport

The appellant requested 172 minutes per week for assistance with transportation. MassHealth modified the request to 130 minutes per week because the time requested for assistance with transportation is longer than ordinarily required for someone with the appellant's physical needs. Specifically, MassHealth modified the frequency (from 64 visits to 20 visits) to the appellant's physical therapy provider. The appellant disputed this modification, arguing generally that some of her providers are not listed in the evaluation. Further, she stated that she sees two different physical therapists at one location. As noted by the MassHealth representative, MassHealth cannot authorize assistance with medical transportation to providers not listed on the evaluation. Further, the appellant has not demonstrated that MassHealth's modification to her physical therapy provider was made in error. The appellant testified that she sees two different therapists at the provider's office. However, she did not clarify the total number of visits she will attend during the PA period at issue. Without more specific information, the appellant has not shown that MassHealth's authorization fails to meet her needs. As noted by the MassHealth representative, MassHealth's records currently indicate that the appellant has been authorized for 20 physical therapy visits. Without more, the appellant has not demonstrated that she needs more than 130 minutes per week for assistance with MD transport, and this portion of the appeal is denied.

For these reasons, 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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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