

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Remanded	Appeal Number:	2312769
Decision Date:	06/07/2024	Hearing Date:	01/12/2024
Hearing Officer:	Kimberly Scanlon	Record Open to:	04/12/2024

Appearance for Appellant:

Via telephone



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:	Approved in part; Remanded	Issue:	Prior Authorization – PCA Services
Decision Date:	06/07/2024	Hearing Date:	01/12/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South 1 (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 November 3, 2023, MassHealth denied the appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services based on medical necessity (130 CMR 450.204; 130 CMR 422.403(C)(3); Exhibit 1). The appellant filed this appeal in a timely manner on December 4, 2023 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in denying the appellant's PA request for PCA services.

Summary of Evidence

The appellant appeared and testified at the hearing by telephone. MassHealth was represented by a registered nurse and clinical appeals reviewer who appeared at the hearing by telephone and testified as follows: The appellant is a female in her [REDACTED] with diagnoses that include [REDACTED] neuropathic pain, depression and anxiety (Testimony; Exhibit 7, p. 10). The appellant resides with a roommate (Testimony). On October 29, 2023, the PCM Agency, Coastline Elderly Services, submitted an initial evaluation requesting the following PCA services: 12 hours and 45 minutes per week of day/evening hours and 0 hours per night for one year (Testimony). On November 14, 2023, MassHealth denied the request based on medical necessity (130 CMR 450.204). Specifically, MassHealth determined that the appellant's clinical record indicates that she does not require physical assistance with two or more activities of daily living (ADLs) (130 CMR 422.403(C)(3)). The time period for this PA request is October 29, 2023 through October 28, 2024 (Exhibit 1, p. 2).

The MassHealth representative testified that the appellant requested assistance with 3 ADLs – bathing/grooming, assistance with medications, and other healthcare needs (taping her joints). First, MassHealth denied the requested time in the “Bathing” category. The requested time includes 20 minutes per day, 7 days per week for bathing activities and 5 minutes per day, 7 days per week for washing hair (Testimony; Exhibit 7, p. 16). The MassHealth representative explained that the requested time in this category was denied because the documentation submitted on behalf of the appellant indicates that she has sufficient functional ability to perform this task without physical assistance (Testimony). Specifically, the documentation submitted by the PCM agency indicates that the appellant has a walk-in style shower, shower seat without back, and a hand-held hose. She demonstrated independent shower transfers from her wheelchair to the shower seat and from the shower seat back to her wheelchair. Additionally, the appellant's range of motion is within normal limits (Testimony; Exhibit 7, p. 17).

In response, the appellant testified that she is not able to shower or bathe because she cannot hold her hands over her head to wash her hair and she does not have the range of motion to bend down to shave. She explained that she cuts herself when attempting to shave her legs. As a result, the appellant testified that she has not shaved her legs in months and does not wash her hair unless she saves up enough energy in a 2-week span. The appellant stated that she thought she submitted a document from her physical therapist in support of her appeal which states that the appellant is unable to lift anything over 2 pounds due to muscle weakness and hypermobility from EDS. She explained that because her hair dryer and handheld shower head both weigh over 2 pounds, she is unable to hold them. The appellant explained that she uses a wheelchair and is therefore sitting down in the shower. To wash her hair in the type of shower area the appellant possesses, she must lean her head down and try to hold her arms up to wash her hair. The appellant explains this is a very difficult task to perform by herself because she falls over on occasion. Thus, it is not safe for the appellant and therefore she does not wash her hair regularly. The MassHealth representative asked the appellant whether she could wash the rest of her body. The appellant stated that she has difficulty doing so and therefore only showers once per week.

For the remainder of the week, the appellant testified that she takes sponge baths. Once every 2 days, the appellant is able wash her underarms by using a towel and sink water because it is difficult for her to have the proper range of motion to reach certain areas. For example, the appellant testified that she cannot reach her back to wash that area and as a result, she has not washed her back in approximately one year. The appellant explained that she requires PCA assistance for sponge baths, shaving, and washing her hair. The MassHealth representative explained that shaving is under a separate category (Grooming) contained within the same ADL as "Bathing." The MassHealth representative agreed to restore the requested 5 minutes, once per day, 7 days per week, for hair wash.

With respect to grooming, (which falls under the same ADL as "Bathing"), the appellant requested the following: 3 minutes once per week for nail care, 5 minutes, 2 days per week for shaving, and 5 minutes, every day for "Other" (applying lotion/cream and deodorant) (Testimony; Exhibit 7, p. 18). The MassHealth representative inquired whether the appellant can bend over and reach her toes to cut her toenails. The appellant testified that she has trouble bending over and the grip of the nail clipper is difficult for her due to EDS. As a result, the appellant lets her toenails grow until they become painfully long. The appellant testified that the same is true regarding cutting her fingernails. The MassHealth representative inquired whether the appellant can file her nails. The appellant explained that she cannot do this because she has trouble with the back-and-forth motion. As to shaving, the appellant stated that she does not bother to shave underneath her arms and rarely shaves her legs. However, the appellant testified that she would like to keep up with shaving her legs because the hair becomes too long and uncomfortable for her. As to the 5 minutes requested in the "Other" category, the appellant explained that she uses Bengay cream daily on her back due to joint stiffness in her back and neck which causes pain. She further explained that her back discs move around which requires weekly physical therapy (PT) visits to put her discs back in place. Additionally, the appellant's neck discs were fused at the C5-C6 vertebrae, and her neck is hard to reach to apply the cream to alleviate the pain in that area. The MassHealth representative inquired as to the reason the appellant attends PT. In response, the appellant explained that she attends PT for the EDS to maintain consistency with her range of pain and discomfort. The MassHealth representative agreed to restore the requested time in this category (48 minutes per week). However, the MassHealth representative clarified that Bathing and Grooming are considered one ADL category, and MassHealth covers PCA services when the member requires physical assistance with **2 or more ADLs** (emphasis added).

The MassHealth representative testified that the appellant also requested PCA assistance in the "Medications" category. Specifically, the appellant requested 10 minutes per week for medication pre-fill and 1 minute, 3 times per day, 7 days per week for administration of medication. The appellant expressed her confusion at hearing, stating that that it is unclear to her why 3 times per day was requested because she was seeking once per day for administration of medication. The appellant explained that certain medications are required to be taken consistently at the same time each day. Thus, if you miss a dose the entire regimen is off-track because the medication takes approximately 3-4 weeks to become effective and missing a dose requires the entire process

to resume. The appellant explained that, according to her medical charts, she is unable to successfully remember to consistently take her medications as prescribed, for various reasons, such as broken sleep patterns and memory issues. The MassHealth representative asked whether setting a cell phone alarm would assist the appellant's memory in taking her prescribed medications. The appellant explained that she attempted to try this approach, to no avail. The MassHealth representative asked if the appellant was physically capable of consuming her prescribed medications. The appellant acknowledged at hearing that if her prescribed medications are placed in her hand, she can place them into her mouth to digest them.

The MassHealth representative explained that the PCA program is based on physical need, or physical disability. The appellant asked the MassHealth representative if there is any consideration given for mental conditions that may apply, such as brain fog, in making its determination. The MassHealth representative clarified that the appellant must exhaust all other alternatives, such as setting alarms, or wearing a watch that vibrates, in accordance with the medical necessity requirements. The appellant reiterated that the requested PCA time is only approved if the appellant is unable to physically open the prescription bottles or consume the medication independently or lack the dexterity to do so. As to the requested time for medication pre-fill, the MassHealth representative explained that while this is a weekly task, if the appellant obtains all her medications from one pharmacy, she can opt to have her medications delivered in a pill-pack where she could pull her pills out. The appellant asked the MassHealth representative if she had access to her list of medications. She explained that she currently takes over 7 different medications that all re-fill at different times, which is the reason she was requesting PCA assistance to pick up her medications and fill them. The appellant stated that she uses a wheelchair and does not drive a vehicle. Thus, she is unable to have her prescriptions filled in a timely manner. The MassHealth representative stated that the appellant could have her medications delivered. She reiterated that the appellant must exhaust all other alternatives.

As for the PCA assistance requested for taping the appellant's joints, the MassHealth representative explained that while this is considered as an ADL (Other Healthcare Needs) the appellant requested 10 minutes, once per day, 2 times per week (Exhibit 7, p. 26). The PCM agency noted that the appellant has a diagnosis of EDS and is seen by a PT as she reports chronic issues with joint dislocation, shoulders, spine, hips, and knees. Her PT manipulated her joints back into place. The appellant requires assistance for taping to promote proper joint placement and restrict movement. The appellant presents with pain, fatigue, dizziness, and numbness to hands (Exhibit 7, p. 27). The MassHealth representative explained that while "Other Healthcare Needs" is an ADL, the time requested was twice per week and not a daily task. She stated that to qualify for the PCA program, members must require physical assistance with at least 2 ADLs that are performed daily which cannot be completed independently, after exhausting all other options.

Following the hearing, the record was left open until February 9, 2024 for the appellant to submit additional documentation (Exhibit 8). The record was also left open until February 16, 2024 for MassHealth to review and respond. *Id.* The appellant requested to extend the record open period, which was granted (Exhibits 9, 11, pp. 2-3). The record closed on April 12, 2024 (Exhibit 11, pp. 2-

3). The appellant timely submitted additional information for MassHealth to review (Exhibit 10). MassHealth subsequently responded that the information received did not support medical necessity for requested time of medication management and daily assistance, and therefore MassHealth stands by the original denial (Exhibit 11, p. 1).

Findings of Fact

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

1. The appellant is between the ages of 21 and 64 and is a MassHealth member.
2. The appellant's medical diagnoses include [REDACTED], neuropathic pain, depression, and anxiety.
3. On October 29, 2023, Coastline Elderly Services, a PCM agency, submitted an initial evaluation requesting the following PCA services: 12 hours and 45 minutes per week of day/evening hours and 0 hours per night for one year.
4. On November 14, 2023, MassHealth denied the request because it determined that the appellant does not require physical assistance with two or more ADLs.
5. The PA request at issue covers the time period of October 29, 2023 through October 28, 2024.
6. The appellant requested 20 minutes per day, 7 days per week for bathing and 5 minutes per day, 7 days per week for washing her hair.
7. The documentation submitted indicates that the appellant can transfer independently from her wheelchair to her shower seat and back to her wheelchair. The documentation further indicates that the appellant possesses a walk-in shower and handheld shower hose.
8. The appellant is unable to consistently lift her hands over her head to wash her hair and cannot lift any item that weighs over 2 pounds.
9. At hearing, MassHealth agreed to restore the requested 5 minutes per day, 7 days per week for a hair wash.
10. The appellant requested 3 minutes once per week for nail care, 5 minutes, 2 times per week for shaving, and 5 minutes each day for applying lotion/cream (collectively "Grooming" category). This amounts to 48 minutes per week for grooming.

11. The appellant has trouble bending over and gripping the nail clipper. Because of the limited range of motion, the appellant is unable to use a nail file.
12. The appellant is unable to reach down to shave her legs and cuts herself when she attempts to shave.
13. The appellant is unable to reach her back and neck to apply Bengay cream, which she requires daily due to EDS.
14. The MassHealth representative agreed to restore the requested 48 minutes per week for grooming.
15. Bathing and Grooming are grouped together and considered to be one ADL.
16. The appellant requested 10 minutes, 2 days per week for PCA assistance to tape her joints (Other Healthcare Needs).
18. The appellant requested 10 minutes per week for medication pre-fill and 1 minute, 3 times per day, 7 days per week for administration of medication ("Medications" category).
19. The appellant suffers from memory issues and as a result, does not remember to consistently take her medications.
20. The appellant does not drive a vehicle and uses a wheelchair.
21. The appellant submitted documentation from her physical therapist which states that the appellant has not made significant improvement allowing her to complete ADLs without assistance. The documentation does not address the appellant's need for assistance with medications.

Analysis and Conclusions of Law

MassHealth regulations regarding PCA services are found at 130 CMR 422.000 *et. seq.* 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; (g) toileting; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

(130 CMR 422.403(C)).

Pursuant to 130 CMR 450.204, 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 mental 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), or 517.007.

(130 CMR 450.204(A)).

In accordance with 130 CMR 450.204(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 the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260).

At issue in this appeal is MassHealth’s denial of the appellant’s request for PCA services. MassHealth denied the request because it determined that the appellant does not require assistance with 2 ADLs. MassHealth agreed at the hearing to restore time for PCA assistance in the Bathing and Grooming categories. This adjustment establishes that the appellant requires assistance with 1 ADL.

The appellant also requested PCA assistance for taping her joints in the “Other Healthcare Needs” category. MassHealth acknowledged that this category is a separate ADL, and conceded that appellant requires assistance with this task, but determined that it did not “count” as a second ADL because the appellant does not require daily assistance with this task. However, the applicable regulations do not mandate the need for daily assistance as a prerequisite for coverage (130 CMR 422.403(C)). The record reflects that the appellant needs assistance with this ADL on a consistent, frequent basis.

For these reasons, this appeal is approved in part (the denial should be rescinded) and remanded

to MassHealth to determine the medically necessary hours of PCA assistance.

Order for MassHealth

Rescind November 3, 2023 notice of denial; determine PCA hours for the PA period at issue; send notice with appeal rights.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact Optum. If you experience problems with the implementation of 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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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