

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2312893
Decision Date:	02/20/2024	Hearing Date:	01/11/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Robin Brown, Occupational Therapist, 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:	02/20/2024	Hearing Date:	01/11/2024
MassHealth's Rep.:	Robin Brown, OT, Optum	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center	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 11/21/2023, MassHealth modified the appellant's initial prior authorization request for personal care attendant (PCA) services, submitted by his PCA provider Elder Services of Worcester, from a requested 48 hours and 30 minutes (48:30) of day/evening hours per week to 36:45 day/evening hours per week for the dates of service from 11/21/2023 to 11/20/2024 (130 CMR 422.410; Exhibit 1). On 12/08/2023 the appellant submitted a timely appeal (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified 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 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

Both the appellant and the MassHealth representative appeared telephonically. Exhibits were admitted into evidence (1-4).

The MassHealth representative testified that she is an occupational therapist who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA management agency, Elder Services of Worcester ("provider"). It is an initial evaluation for PCA services. In the PA request for PCA services (Exhibit 4), the provider requested 48:30 day/evening hours per week. Nighttime attendant hours were not requested. The appellant is an adult male who lives with his spouse and minor children. His wife is also a MassHealth member who receives PCA services. The appellant has diagnoses that include asthma, COPD, chronic pain, irritable bowel syndrome, bilateral cataracts, chronic bronchitis, left hip pain and pain in both shoulders (Exhibit 4).

The Optum representative testified that on 11/21/2023 MassHealth modified the PCA request to 36:45 day/evening hours per week. Modifications were made to the request for PCA services that include modifications in the activity of daily living (ADL) task of eating and in the instrumental activities of daily living (IADL) tasks of meal preparation and laundry.

Eating

The appellant's PCA provider requested 10 minutes, 3 times a day, 7 days a week (10 X 3 X 7) for assistance with eating. The provider noted that the appellant needs assistance due to generalized weakness, fatigue, poor endurance, pain, limited range of motion with his left arm.

MassHealth denied the request for assistance with eating. The MassHealth representative stated that the clinical documentation included with the PA request shows that the appellant can feed himself with no assistance using his right hand and arm.

Meal Preparation and Cleanup

The appellant's PCA provider requested 20 X 1 X 7 for assistance with breakfast, 30 X 1 X 7 for lunch and 45 X 1 X 7 for dinner, totaling 95 minutes per day for assistance with meal preparation and cleanup. The provider noted that the appellant has a risk of falls, an unsteady gait, chronic pain, poor standing tolerance, and lower back pain affecting his ability to bend and reach.

MassHealth modified the request for assistance with meal preparation and cleanup to a total of 25

X 1 X 7 for all meals. The MassHealth representative testified that the appellant lives with another MassHealth member who receives PCA services in the home. Time for IADL's, including meal preparation and cleanup, is calculated on a shared basis with others in the home who receive PCA services. The other household member receives 70 minutes per day for PCA assistance with meal preparation and cleanup. The total for both members is 95 minutes per day with the modified time.

Laundry

The appellant's PCA provider requested 60 minutes a week for assistance with laundry. The provider noted that the appellant is

dependent for all IADL's including laundry, shopping, housekeeping, and meal preparation due to risk for falls, unsteady gait, chronic pain, poor standing tolerance, difficulties with bending/reaching due to lower back pain, inability to lift/carry heavy objects, shortness of breath with minimal exertion secondary to Asthma-COPD Overlap Syndrome, limited range of motion in left arm/hand secondary to left latera epicondylitis, poor endurance, generalized weakness, and fatigue. Consumer's spouse is unable to perform IADL's due to her own medical conditions and requires a PCA herself. Time allotted for this appellant's laundry only.

MassHealth modified the request for assistance with laundry to 45 minutes a week. The MassHealth representative testified that the other household member who receives PCA services has been approved for 45 minutes per week for laundry. PCA time for assistance with IADL's is calculated on a shared basis with other household members who receive PCA services. Combined ,the household has been approved for 90 minutes per week for assistance with laundry including the time as modified by MassHealth.

The appellant appeared at the fair hearing telephonically and testified with the assistance of an Arabic language interpreter. He testified that he now has pain in both shoulders and his condition has been getting worse. On the date of the hearing, the appellant stated he is not feeling well. He also testified that he is shaking. He was unable to respond to MassHealth's testimony, except to state that he needs more PCA time than MassHealth has approved.

Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, Elder Services of Worcester ("provider"). It is an initial evaluation (Testimony; Exhibit 4).

2. In the PA request for PCA services (Exhibit 4), the provider requested 48:30 day/evening hours per week (Testimony; Exhibit 4).
3. No nighttime attendant hours were requested (Testimony; Exhibit 4).
4. The appellant is an adult male who lives with his spouse and minor children. He has diagnoses that include asthma, COPD, chronic pain, irritable bowel syndrome, bilateral cataracts, chronic bronchitis, left hip pain and pain in both shoulders (Testimony; Exhibit 4).
5. The appellant's spouse is a MassHealth member who receives PCA assistance (Testimony; Exhibit 4).
6. On 11/21/2023 MassHealth modified the PCA request to 36:45 day/evening hours per week. Modifications were made to the request for PCA services that include modifications in the activity of daily living (ADL) task of eating and the instrumental activities of daily living (IADL) tasks of meal preparation and cleanup and laundry (Testimony; Exhibits 1 and 4).
7. The appellant filed his timely request for a fair hearing with the Board of Hearings on 12/08/2023. A fair hearing was held on 01/11/2024 (Exhibits 2 and 3).
8. The appellant's PCA provider requested 10 minutes, 3 times a day, 7 days a week (10 X 3 X 7) for assistance with eating. The provider noted that the appellant needs assistance due to generalized weakness, fatigue, poor endurance, pain, limited range of motion with his left arm (Testimony; Exhibit 4).
9. MassHealth denied the request for PCA assistance with eating (Testimony; Exhibits 1 and 4).
10. In the IADL of meal preparation and clean up, the appellant's PCA provider requested 20 X 1 X 7 for assistance with breakfast, 30 X 1 X 7 for lunch and 45 X 1 X 7 for dinner, totaling 95 minutes per day. The provider noted that the appellant has a risk of falls, an unsteady gait, chronic pain, poor standing tolerance and lower back pain affecting his ability to bend and reach (Testimony; Exhibit 4).
11. MassHealth modified the request for assistance with meal preparation and cleanup to a total of 25 minutes per day (Testimony; Exhibit 4).
12. The appellant's spouse receives 70 minutes per day for assistance with meal preparation and cleanup (Testimony).
13. The appellant's PCA provider requested 60 minutes a week for assistance with laundry. The provider noted that the appellant is

dependent for all IADL's including laundry, shopping, housekeeping, and meal preparation due to risk for falls, unsteady gait, chronic pain, poor standing tolerance, difficulties with bending/reaching due to lower back pain, inability to lift/carry heavy objects, shortness of breath with minimal exertion secondary to Asthma-COPD Overlap Syndrome, limited range of motion in left arm/hand secondary to left latera epicondylitis, poor endurance, generalized weakness, and fatigue. Consumer's spouse is unable to perform IADL's due to her own medical conditions and requires a PCA herself. Time allotted for this appellant's laundry only.

(Testimony; Exhibit 4).

14. MassHealth modified the request for PCA assistance with laundry to 45 minutes per week (Testimony; Exhibit 4).

15. The appellant's spouse also receives 45 minutes per week for PCA assistance with laundry (Testimony).

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;
- (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.

(Emphasis added.)

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) MassHealth covers personal care 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 personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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 personal care agency, 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting

(4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

- (A) Activities of Daily Living (ADLs). Activities of daily living include the following:
- (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/grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
 - (4) dressing or undressing: 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 and 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 personal care 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 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.

(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 Comm'n.*, 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 male who lives with his spouse and minor children. The appellant has diagnoses that include asthma, COPD, chronic pain, irritable bowel syndrome, bilateral cataracts, chronic bronchitis, left hip pain and pain in both shoulders. MassHealth modified the appellant's request for PCA time in three areas where the provider requested time for assistance: eating; meal preparation and cleanup; and laundry. The appellant's spouse is a MassHealth member who also receives PCA assistance.

The appellant's PCA provider requested 10 minutes, 3 times a day, 7 days a week (10 X 3 X 7) for assistance with eating. The provider noted that the appellant needs assistance due to generalized weakness, fatigue, poor endurance, pain, limited range of motion with his left arm. MassHealth denied the request for PCA assistance with eating. The MassHealth representative testified that the clinical documentation included with the PA request shows that the appellant has pain in his left arm, but there is no information to indicate that he cannot feed himself using his right arm. The appellant did not provide any substantive testimony concerning this modification. As a result, MassHealth's modification in the area of feeding is supported by the relevant facts in the hearing record, as well as the MassHealth regulations. This portion of the appeal is therefore denied.

In the IADL of meal preparation and clean up, the appellant's PCA provider requested 20 X 1 X 7 for assistance with breakfast, 30 X 1 X 7 for lunch and 45 X 1 X 7 for dinner, totaling 95 minutes a day. The provider noted that the appellant has a risk of falls, an unsteady gait, chronic pain, poor standing tolerance, and lower back pain affecting his ability to bend and reach. MassHealth modified the request to 25 minutes a day. In the IADL of assistance with laundry, the provider requested 60 minutes per week. MassHealth modified the time for assistance with laundry to 45 minutes a week. In both cases, MassHealth testified that the PCA time was modified because the appellant lives with another adult MassHealth member who also receives PCA services in the areas requested. MassHealth modified the time requested because when more than one member receives PCA services in a household, PCA time must be calculated on a shared basis.

The appellant did not directly address the modifications. Instead, he asserted that needed more PCA time than MassHealth approved. MassHealth's modifications in the IADL's of meal preparation and cleanup and laundry is supported by the material facts in the hearing record as well as the above regulations. Accordingly, this portion of the appeal is denied.

For the foregoing 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

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