

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2313165
Decision Date:	02/02/2024	Hearing Date:	01/18/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN for 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:	Dismissed in Part; Denied in Part	Issue:	Prior Authorization
Decision Date:	02/02/2024	Hearing Date:	01/18/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Linda Winburn
Hearing Location:	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 December 4, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on December 14, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

The appeal issue is whether MassHealth was acting within its discretion in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is an adult MassHealth member and was joined at hearing by her daughter, who is also her PCA. MassHealth was represented by a clinical nurse reviewer for Optum, which manages MassHealth's PCA program. All parties appeared by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from a primary diagnosis of asthma, no vision in her left eye and poor vision in her right eye. The appellant's daughter reported that she also suffers from rheumatoid arthritis, which has resulted in serious deformities in her hands and fingers. On November 15, 2023, MassHealth received a prior authorization request submitted by the personal care management agency (PCM) Tempus on the appellant's behalf requesting 14 hours of weekly PCA services. On December 4, 2023, MassHealth modified the request and approved the appellant for 10.5 hours of weekly services.

Modifications were made in the areas of bathing, toileting, medication assistance, and meal preparation. After hearing, MassHealth agreed to reinstate all requested time, although, as discussed *infra*, the appellant's representative maintained that Tempus did not request enough overall time to adequately meet the appellant's needs. The approved time is as follows:

- **Bathing:** approved at 30 minutes per week;
- **Toileting:** approved at five minutes, two times per day, seven days per week;
- **Medication Assistance:** approved at two minutes, one time per day, seven days per week and two minutes, two times per day, seven days per week;
- **Meal Preparation:** approved at 65 minutes per day, seven days per week.

Thus, remaining at issue was the appellant's representative's contention that Tempus did not request enough hours to allow a PCA to properly care for her mother. She reported that, last year, when she was a member of the Commonwealth Care Alliance senior care organization, the appellant received 36 hours of PCA services, and that her mother's condition has not improved.

The MassHealth representative maintained that MassHealth cannot approve more time than is requested by a PCM without clinical documentation from a member's medical team. The appellant's representative reported that she did submit documentation from the appellant's doctors; however, a review of the documents shows that they do not specify the amount of time for which the appellant requires PCA services. *See generally*, Exhibit 6. The MassHealth representative highlighted that the appellant's doctor signed off on the time requested by Tempus. *See* Exhibit 5 at 44.

Findings of Fact

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

1. The appellant is an adult MassHealth member who was not receiving PCA services directly through MassHealth prior to the issuance of the notice at issue. Testimony, Exhibit 5, Exhibit 4.
2. On November 15, 2023, MassHealth received a prior authorization request submitted by Tempus on the appellant's behalf requesting 14 hours per week in PCA services.
3. On December 4, 2023, MassHealth modified the appellant's prior authorization request to 10 hours and 30 minutes of PCA services. The modifications were made in the areas of bathing, toileting, medication assistance, and meal preparation. Exhibit 1, Exhibit 5 at 2.
4. The appellant filed a timely appeal on December 14, 2023. Exhibit 2.
5. At hearing, MassHealth agreed to reinstate all requested time as follows:
 - **Bathing:** approved at 30 minutes per week;
 - **Toileting:** approved at five minutes, two times per day, seven days per week;
 - **Medication Assistance:** approved at two minutes, one time per day, seven days per week and two minutes, two times per day, seven days per week;
 - **Meal Preparation:** approved at 65 minutes per day, seven days per week.Testimony.
6. The appellant is specifically asking for more PCA time to be allowed because, last year, she received 36 hours of services through the Commonwealth Care Alliance senior care organization.
7. MassHealth has agreed to reinstate all time requested by Tempus in its prior authorization request. Testimony, Exhibit 5 at 35.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or

- (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). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...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.

130 CMR 450.204(A)-(B).

In the case of PCA services, the prior authorization request is “a request to initiate, continue, or adjust a member’s prior authorization for PCA services...that the [Personal Care Management (PCM)] agency must submit to the MassHealth agency...” 130 CMR 422.402. A PCM agency is a third-party that contracts with MassHealth to provide PCA functions to members. *Id.* The MassHealth regulations require PCMs to assist members with submitting prior authorization requests, and in circumstances where a member making an initial request for benefits, must abide by the following:

- (A) Initial Request for Prior Authorization for PCA Services. With the exception of 130 CMR 422.416(D), PCM agencies must submit the initial request for prior

undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

authorization for PCA services to the MassHealth agency within 45 calendar days of the date of the initial inquiry about a member to the PCM agency for PCA services. Requests for prior authorization for PCA services must include

- (1) the completed MassHealth Application for PCA Services and MassHealth Evaluation for PCA Services;
 - (2) the completed MassHealth Prior Authorization Request form;
 - (3) any documentation that supports the member's need for PCA services.
- This documentation must

- (a) identify a permanent or chronic disability that impairs the member's ability to perform ADLs and IADLs without physical assistance; and
 - (b) state that the member requires physical assistance with two or more ADLs as defined in 130 CMR 422.410(A).
- (4) the completed and signed assessment of the member's ability to manage the PCA program independently.

130 CMR 422.416. Here, the action that was taken by MassHealth was a modification of time requested for mobility, toileting, medication assistance, and meal preparation. At hearing, MassHealth agreed to reinstate all hours requested within the appellant's prior authorization request. The appellant further asks that the hours that she was receiving in previous years through her senior care organization also be approved.

However, this appeal offers no mechanism to approve the appellant for more hours than were requested by the PCM agency in the prior authorization request at issue, as MassHealth has not taken adverse action related to that request. *See generally*, 130 CMR 610.032(A)(3) and (5) (Bases for fair hearing included *MassHealth agency* action to restrict a member's assistance and *MassHealth agency* determinations regarding scope and amount of assistance). In other words, the Board of Hearings only has jurisdiction in determining whether MassHealth actions were made in accordance with the regulations, not over actions of a PCM agency. Where the appellant argues that the PCM agency did not request the proper amount of time to meet the appellant's needs, her issue is with the PCM agency, not with MassHealth.

Although MassHealth did take an adverse action in reducing the amount of time requested in the November 15, 2023, prior authorization request, MassHealth has now reinstated all requested hours. The appellant is asking that time be approved for time beyond what was requested by Tempus. Because MassHealth did not take an adverse action with respect to that time, and because the appellant submitted no clinical documentation to show that more hours than requested are needed, this hearing officer is without authority to honor the appellant's request. *See* 130 CMR 610.082(C) ("The decision must be made in accordance with the law").

As MassHealth has agreed to reinstate all requested hours, and the appellant's remaining argument is based on an action by an entity other than MassHealth, there is no basis for this the

remaining issues on appeal to be ruled in the appellant's favor. For the foregoing reasons, the appeal is hereby DISMISSED with respect to the modifications made by MassHealth and DENIED with respect to the appellant's request for approval of additional time.²

Order for MassHealth

Reinstate all time requested in the appellant's November 15, 2023, prior authorization request to total 14 hours per week of PCA services.

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 your MassHealth Enrollment Center. 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.

Mariah Burns
Hearing Officer
Board of Hearings

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

² The appellant may, at any time, request an adjustment of her PCA hours pursuant to 130 CMR 422.416(B). This hearing officer makes no finding as to whether such an adjustment should be allowed.