

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2313429
Decision Date:	2/29/2024	Hearing Date:	1/22/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen, 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:	PCA services
Decision Date:	2/29/2024	Hearing Date:	1/22/2024
MassHealth's Rep.:	Kelly Rayen	Appellant's Rep.:	Pro se
Hearing Location:	Quincy (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

By notice dated November 11, 2023, MassHealth denied Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on December 20, 2023. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for prior authorization of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.412 and 450.204, in denying Appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth at hearing and submitted records in support. Exhibit 4. Appellant appeared at hearing and submitted documents for hearing. Exhibit 2. A summary of testimony and documents follows. Appellant is in her early sixties with

diagnoses including osteoarthritis, status post left knee arthroscopy in August 2023, neuropathy, obesity, depression, and stage 1 kidney disease. Exhibit 4 at 5, 10. Appellant had been approved for adult foster care (AFC) services through Royal Care from December 21, 2022 through December 20, 2023. Appellant testified that her AFC services ended well before then because her adult son moved out of the home.

On October 26, 2023, Appellant's Personal Care Management Agency (PCMA), Tempus, submitted an initial evaluation for PCA services on Appellant's behalf, requesting 23 hours per week of PCA services. On November 17, 2023, MassHealth denied the request because the clinical record indicated that Appellant does not require physical assistance with two or more activities of daily living (ADLs). Exhibit 1.

Appellant's PCMA requested assistance for ADLs of mobility/transfers, dressing/undressing, and toileting. Exhibit 4 at 14, 21, 23. Appellant's PCMA also requested assistance at night with transfers and toileting. *Id.* at 14, 23. Finally, the PCMA requested assistance with Appellant's instrumental activities of daily living (IADLs): meal preparation, laundry, shopping, and housekeeping. *Id.* at 30-31.

Regarding transfers, Appellant's PCMA requested 2 minutes, 6 times per day, 7 days per week during day/evening hours and 2 minutes, 2 times per night, 7 nights. *Id.* at 14. The notes indicated that the requested assistance was for getting Appellant into and out of bed, as Appellant cannot lift her legs into the bed. The occupational therapy (OT) evaluation indicated that Appellant has minimal assist needs for in and out of bed only. The OT wrote that Appellant was independent transferring except required minimal assist to move feet to edge of the bed for supine to sit. *Id.* at 7. The nurse evaluator noted that Appellant was observed getting up from a kitchen chair by pushing down on the kitchen table and can ambulate with her rollator and rolling walker. *Id.* at 15. The MassHealth representative testified that the OT evaluation noted that Appellant has good upper body strength and range of motion. *Id.* at 7. MassHealth denied this request, finding that Appellant could benefit from durable medical equipment (DME), such an assist bar, given her sufficient strength. MassHealth covers OT services to teach and assist Appellant in using devices.

Appellant testified that she was having a good day when the evaluation occurred and was able to get up from a seated position when she braced herself on two sturdy tables. However, Appellant does not trust her rollator walker to stay still even when it is locked, so she will not use it for transfers. Appellant's knees will give out on her and sometimes it takes several attempts to stand up. Appellant testified that she has damaged meniscus in her knee. Appellant worked for Boston Public Schools for a number of years as a lunch monitor and the constant standing took a toll on her body. Appellant can sit on her bed but needs assistance from the PCA to lift her legs. Appellant argued that the nurse evaluator did not observe Appellant get into bed, only saw her on the edge of the bed. Appellant argued that she does not sleep on the edge of the bed and needs help getting to the right spot. Appellant's son will help with this task by using a blanket Appellant can pull. Appellant's weight makes the transfer more challenging.

Regarding assistance with dressing, Appellant's PCMA requested 5 minutes, 1 time per day, 7 days per week. For undressing, the PCMA requested 3 minutes, 1 time per day, 7 days per week. The evaluation stated that Appellant is able to independently dress her upper body but has difficulty bending. Appellant needs assistance lifting pants to her upper thighs, and then she can complete the task. Appellant requires assistance with socks and shoes. Appellant needs assistance with lower body undressing. MassHealth denied this request, determining that DME such as a long handled dressing device and shoehorn can help Appellant as a less-costly alternative. MassHealth covers OT services to teach and assist Appellant in using devices. The OT evaluation indicated that Appellant would benefit from long-handled adaptive equipment for independent dressing. *Id.* at 7.

Appellant testified that she can put on a shirt but cannot fasten her bra. Appellant needs assistance putting on compression socks and an Ace bandage around her knee. Appellant needs assistance to tie shoes and fasten boots. Due to back pain, Appellant wears loose, comfortable sweatpants. Appellant testified that the evaluating nurse did not ask about certain things. Some days Appellant needs more assistance. Appellant has not tried a long handled device.

Regarding toileting, Appellant's PCMA requested 2 minutes, 4 times a day, 7 days per week during the day and 2 minutes, 2 times per day, 7 days per week at night for assistance with changing an absorbent brief. The notes indicate that Appellant needs assistance pulling the brief up to her thighs, where she can complete the task. MassHealth denied this request, determining that DME such as a long handled dressing device can assist Appellant with this task. Appellant testified that she needs assistance at night, as she has incontinence. She also has a CPAP machine that has malfunctioned during the night.

The PCMA request also included time for assistance with meal preparation, laundry, shopping, and housekeeping. Appellant requires assistance with all home tasks because she is unable to do these things. For instance, Appellant cannot stand at the stove or change her soiled sheets after an incontinence episode. Appellant argued that DME does not cook her food or help her with other areas of her life. Appellant argued that she does not appear as infirm as she is, but she desperately needs assistance. Appellant is in pain.

Appellant testified that she preferred the care she received with Royal Care and does not appreciate Tempus as an agency. Appellant testified that she plans to switch back to Royal Care. Appellant testified that Tempus did not document all of Appellant's medications or do right by her. Appellant's youngest adult son is planning to move in once Appellant gets approval through housing.

Appellant's physician wrote a letter on Appellant's behalf. Exhibit 2. The physician wrote that Appellant has chronic gait instability/permanent fall risk from lumbar disc disease/sciatica and bilateral osteoarthritis of the knees. Appellant has urinary incontinence requiring adult pull-ups, diabetes type two requiring dulaglutide injections, chronic pulmonary embolus requiring chronic

anticoagulation, obstructive sleep apnea requiring cpap, and asthma. *Id.* Appellant is permanently disabled from these conditions and her shortness of breath limits her function and activity. The physician wrote that Appellant requires physical assistance with bathing, including transfers in and out of the tub in the shower chair and washing and rinsing. *Id.* Appellant requires assistance with donning and doffing her pants, socks, and shoes. Appellant requires assistance with toileting and hygiene and changing her sheets after incontinence at night. Appellant needs assistance at night because her cpap machine needs to be filled with water 3 times per night. Appellant's physician wrote that she needs assistance with her IADLs. *Id.*

According to the Tempus OT evaluation, Appellant is independent with shower transfers and has a shower seat and grab bar. Exhibit 4 at 7.

Findings of Fact

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

1. Appellant is in her early sixties with diagnoses including osteoarthritis, status post left knee arthroscopy in August 2023, neuropathy, obesity, depression, and stage 1 kidney disease. Exhibit 4 at 5, 10.
2. Appellant had been approved for AFC through Royal Care from December 21, 2022 through December 20, 2023, though these services ended earlier when her adult son moved out.
3. On October 26, 2023, Tempus submitted an initial evaluation for PCA services on Appellant's behalf, requesting 23 hours per week of PCA services.
4. On November 17, 2023, MassHealth denied the request because the clinical record indicated that Appellant does not require physical assistance with two or more ADLs. Exhibit 1.
5. Appellant filed a timely appeal on December 20, 2023. Exhibit 2.
6. For assistance with transfers in and out of bed, Appellant's PCMA requested 2 minutes, 6 times per day, 7 days per week during day/evening hours and 2 minutes, 2 times per night, 7 nights. *Id.* at 14.
7. The OT wrote that Appellant was independent transferring except required minimal assist to move feet to edge of the bed for supine to sit. *Id.* at 7.
8. The OT wrote that Appellant had good upper body strength and range of motion. *Id.*

9. Regarding assistance with dressing, Appellant's PCMA requested 5 minutes, 1 time per day, 7 days per week. For undressing, the PCMA requested 3 minutes, 1 time per day, 7 days per week.
10. The OT evaluation indicated that Appellant would benefit from long-handled adaptive equipment for independent dressing. *Id.* at 7.
11. Regarding toileting, Appellant's PCMA requested 2 minutes, 4 times a day, 7 days per week during the day and 2 minutes, 2 times per day, 7 days per week at night for assistance with changing an absorbent brief.
12. Appellant's physician wrote that Appellant has chronic gait instability/permanent fall risk from lumbar disc disease/sciatica and bilateral osteoarthritis of the knees. Appellant has urinary incontinence requiring adult pull-ups, diabetes type two requiring dulaglutide injections, chronic pulmonary embolus requiring chronic anticoagulation, obstructive sleep apnea requiring cpap, and asthma. Exhibit 2 at 5.
13. The physician wrote that Appellant requires physical assistance with bathing, including transfers in and out of the tub in the shower chair and washing and rinsing. *Id.*
14. According to the Tempus OT evaluation, Appellant is independent with shower transfers and has a shower seat and grab bar. Exhibit 4 at 7.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when the following conditions are met (emphasis added):

- (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 ADLs and IADLs without physical assistance.
- (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.

Pursuant to 130 CMR 450.204(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). MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) dressing: 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 or 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 PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

Here, MassHealth denied Appellant's request because it determined Appellant does not require assistance with two or more ADLs. Though time for assistance was requested for 3 ADLs (transfers, dressing/undressing, and toileting), MassHealth determined that based on the evaluation, Appellant would have sufficient strength and ability to complete these tasks with DME, which would be a less costly alternative than PCA services. Therefore, Appellant's request for PCA assistance with at least two ADLs does not meet medical necessity requirements under 130 CMR 450.204(A).

Appellant testified that she had not tried DME for assistance with her daily tasks, as she had always had hands-on care through the AFC program. Additionally, Appellant requires assistance with IADLs, arguing that DME cannot stand at the stove or take out the trash. However, the threshold for PCA approval is requiring assistance with at least two ADLs. Without that, MassHealth will not cover assistance with IADLs through the PCA program. Finally, though the PCMA finding that Appellant was independent with bathing was contradicted by Appellant's doctor's note, this ADL alone would not meet the threshold as MassHealth determined that there was not medical necessity for Appellant to have hands-on assistance with the other ADLs. The doctor wrote that Appellant needs assistance with dressing and toileting, but did not address whether DME would be insufficient for Appellant's needs.

The OT evaluation submitted with the request indicates that Appellant has upper body strength and range of motion and would benefit from trying DME to assist with her ADLs. Without OT findings to the contrary, or findings that Appellant has attempted using DME for these tasks and has not had success, MassHealth's decision to deny assistance is supported. As MassHealth determined that physical assistance with two or more ADLs was not medically necessary given Appellant's evaluation, Appellant does not meet the regulatory requirements for PCA services. Accordingly, the appeal is denied.

Given that Appellant's adult son will be added to Appellant's housing, the AFC program Appellant had in place previously may be available to her through a new prior authorization request. Through the AFC program, care is provided "by a qualified AFC caregiver, as described in 130 CMR 408.434, who lives in the residence and who is selected, supervised, and paid by the AFC

provider.” 130 CMR 408.415(A). Appellant may also explore other areas of covered services, such as homemaking through Elder Services for her IADL needs. Finally, Appellant may also seek a new evaluation from a different PCMA given her dissatisfaction with Tempus.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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