

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2313647
Decision Date:	2/7/2024	Hearing Date:	01/22/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:
Via telephone:



Appearance for MassHealth:
Via telephone:
Donna Burns, RN



*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; Denied in part	Issue:	Prior Authorization – PCA
Decision Date:	2/7/2024	Hearing Date:	01/22/2024
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Daughters & Sons
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 November 20, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on December 26, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

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

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant was represented at hearing via telephone by her adult children.

The MassHealth representative testified that the documentation submitted shows the appellant is over the age of 65 with a primary diagnosis of generalized muscle weakness. Relevant medical history shows that the appellant experiences hypothyroidism, pain in the right ankle and joints of the right foot and knee, hearing loss, generalized muscle weakness, constipation, unsteady gait, and history of falls. On November 3, 2023, the appellant's personal care management (PCM) agency, Elder Services of Worcester Area, Inc., submitted a prior authorization request for PCA services requesting 81 hours and 45 minutes per week for dates of service of November 29, 2023 through November 28, 2024. On November 28, 2023, MassHealth informed the appellant that it modified the request to 77 hours and 0 minutes per week. MassHealth made modifications related to PCA assistance with passive range of motion.

The appellant requested 5 minutes, 2 times per day, 7 days per week for each extremity (upper left, upper right, lower left, and lower right). MassHealth modified the request and did not approve any time for passive range of motion because it did not meet the professionally recognized standard of care for her diagnoses. (Testimony). The appellant receives both physical therapy and occupational therapy through the Waiver Program. She also has 74 hours per week of companion care through the Waiver Program. The MassHealth representative explained passive range of motion is generally for someone who cannot independently perform active range of motions; whereas active range of motion is when someone is trying to strengthen their muscles. The appellant's use of physical and occupational therapy suggests they are trying to strengthen the appellant with active range of motion. Additionally, she explained the muscle strength scale (a 5-point scale) a physical therapist uses to evaluate a patient's strength and range of motion. The physical therapy evaluation submitted with the prior authorization shows that the appellant's range of motion for her extremities is mostly within functional limits and her strength was mostly in the 4 range, suggesting she has pretty good strength.

The appellant's representatives testified that the appellant does not have good strength and she can barely lift her coffee cup. The appellant gets physical and occupational therapy, both two times per week, but the services are not duplicative with that of the PCA. The physical therapist does a lot of hand motion exercises to keep their mother's hands from contracting. The physical therapist also tries to get the appellant on her feet to get her walking with the assistance of a walker. She cannot get up on her own. The PCA stretches the appellant's arms and tries to unfold her hands. The PCA helps with leg exercise while in a chair, lifting and lowering her legs. It is a combination of the appellant doing it on her own and the PCA helping the appellant when she is too weak to do it herself. The appellant can lift her arms on her own, but not her legs. They stated

that their mother is not up for the passive range of motion exercises in the morning, but the PCA always does it in the afternoon. They were not sure if the PCA did it once or twice per day. The appellant's children state that the appellant is getting weaker and she cannot be home alone for any period of time. They were surprised that she was approved for fewer PCA hours and worried she would decline further with fewer hours.

Based on the testimony, MassHealth was willing to approve 5 minutes, 1 time per day, 7 days per week for passive range of motion for each extremity.

Findings of Fact

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

1. The appellant is over the age of 65 with a primary diagnosis of generalized muscle weakness (Testimony and Exhibit 4).
2. Relevant medical history shows that the appellant experiences hypothyroidism, pain in the right ankle and joints of the right foot and knee, hearing loss, generalized muscle weakness, constipation, unsteady gate, and history of falls (Testimony and Exhibit 4).
3. On November 3, 2023, MassHealth received a prior authorization request for PCA services requesting 81 hours and 45 minutes per week for dates of service of November 29, 2023 through November 28, 2024 (Testimony and Exhibit 4).
4. On November 28, 2023, MassHealth informed the appellant that it modified the request to 77 hours and 0 minutes per week (Testimony and Exhibit 4).
5. MassHealth made modifications related to PCA assistance with passive range of motion (Testimony and Exhibits 1 and 4).
6. The appellant seeks time for PCA assistance with passive range of motion as follows: 5 minutes, 2 times per day, 7 days per week for each extremity (Testimony and Exhibit 4).
7. MassHealth modified the request and did not approve any time for passive range of motion (Testimony and Exhibit 1).
8. Documentation shows that the appellant receives physical therapy and occupational therapy, both twice per week. The physical therapy evaluation shows that the appellant's range of motion for her extremities is mostly within functional limits and her strength was mostly within the 4 range (on a 5-point scale, indicating she has pretty good strength). (Testimony and Exhibit 4).

9. According to the appellant's children, her strength is not good. She can lift her arms on her own, but not her legs. She also experiences contractures in her fingers and hands. (Testimony).
10. The appellant receives 74 hours per week of companion care through the Waiver Program (Testimony).
11. The appellant is not up for passive range of motion exercises in the morning, but the PCA always does it in the afternoon. The appellant's children were not sure if the PCA performed passive range of motion exercises once or twice per day. (Testimony).
12. Based on testimony at hearing, MassHealth offered to increase the amount of time for assistance with passive range of motion to 5 minutes, 1 time per day, 7 days per week (Testimony).

Analysis and Conclusions of Law

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 or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (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 Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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 or 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.

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.

See 130 CMR 422.412 (emphasis added).

As to the appellant's request for passive range of motion, the appeal is approved in part and denied in part. At hearing, MassHealth offered to increase the time approved to 5 minutes, 1 time per day, 7 days per week for each extremity. The appellant's representatives testified that the appellant is not up for passive range of motion in the morning and the PCA does it with her in the afternoon, but they were not sure if the PCA assisted with it more than one time per day. Additionally, the work done by occupational and physical therapists suggests they are trying to strengthen the appellant through active range of motion, not passive range of motion. While the appellant's representatives wanted her to have more PCA time so she is not left home alone, they did not establish that more time for PCA assistance with passive range of motion was medically necessary. Time for babysitting, respite care, and supervision is not covered by the PCA program, which is designed to provide hands-on, physical assistance with ADLs. For these reasons, the appellant is approved 5 minutes, 1 time per day, 7 days per week for PCA

assistance with passive range of motion for each extremity.

Order for MassHealth

Approve the appellant for 5 minutes, 1 time per day, 7 days per week for passive range of motion for each extremity.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]