

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2400381
Decision Date:	3/15/2024	Hearing Date:	2/02/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN

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:	Approved	Issue:	Prior Approval PCA Services, ADLs
Decision Date:	3/15/2024	Hearing Date:	02/02/2024
MassHealth's Rep.:	Kelly Rayen	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 18, 2023, MassHealth denied the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record and that the Appellant's disability is not permanent or chronic in nature. (See 130 CMR 422.403(C)(2), 130 CMR 422.402(C)(3) and Exhibit 1). The Appellant filed this appeal in a timely manner on January 12, 2024. (see 130 CMR 610.015(B)). A decision denying assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record and that the Appellant's disability is not permanent or chronic in nature. (See 130 CMR 422.403(C)(2), 130 CMR 422.402(C)(3) and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.403(C)(2) and 130 CMR 422.402(C)(3), in determining that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record and that the Appellant's disability is not permanent or chronic in nature.

Summary of Evidence

The Appellant is a MassHealth member under the age of 65 who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 7). On December 2, 2023, MassHealth received a prior authorization request for PCA services submitted by [REDACTED], the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) The Appellant's primary diagnoses include Chronic Heart Failure and Diabetes. (Testimony, Exhibit 7, pg. 9) The Appellant underwent Coronary Artery Bypass Surgery in September of 2023. (Testimony, Exhibit 7, pg. 9) The Appellant's Representative testified that the Appellant has also been diagnosed with blindness, the onset of which occurred in 2019. (Testimony, Exhibit 7, pg. 9 Exhibit 7, pg. 51) MassHealth denied the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record and that the Appellant's disability is not permanent or chronic in nature. (See 130 CMR 422.403(C)(2), 130 CMR 422.402(C)(3) and Exhibit 1).

MassHealth, represented by a nurse from Optum, testified that the request was denied because the Appellant's clinical record does not support that the Appellant requires hands-on physical assistance with at least 2 ADLs. (Testimony) MassHealth further testified that the Appellant's condition, heart failure, is neither permanent nor chronic in nature. (Testimony) MassHealth testified that PCA evaluations are generally done post-surgery, once the patient has recovered. (Testimony) MassHealth stated that recovery for surgery of the Appellant's nature generally requires 6 months of recuperation. (Testimony). MassHealth noted the physical assessment of the Appellant, specifically that the Appellant was observed to raise her arms, move her feet and don socks, albeit with great difficulty. (Testimony) MassHealth expounded that the Appellant displayed shortness of breath and fatigue, which is not unusual for a person who underwent the surgery that the Appellant had in September of 2023. (Testimony). MassHealth continued, noting the Appellant had closed her hands into fists and displayed fine motor skills coordination, displayed independence with sitting and transferring, again exhibiting difficulty with the task. (Testimony) MassHealth noted the report indicated the Appellant was able to accomplish bed transfers and lay supine and was able to ambulate with the aid of a rolling walker, with a slow and steady gait, once again displaying shortness of breath and complaining of fatigue. (Testimony)

MassHealth noted that at the time of the evaluation, the Appellant received Home Health Aide Services, Physical Therapy, and Occupational Therapy. (Testimony) MassHealth stated in order to qualify for PCA services, the conditions must be chronic and debilitating, and that a consumer must recover from the surgery and only after the recovery, be evaluated for PCA services. (Testimony) MassHealth stated that evaluation performed allotted insufficient time for the Appellant to properly heal before undergoing the evaluation. (Testimony)

Inquiry posed to MassHealth included discussion of the Appellant's ADLs. The Appellant's submitted request indicated the need for physical assist with several ADLs:

- 1) ADL – Bathing – 25 minutes, 1 time a day, 7 days a week for a total of 175 minutes per week (Exhibit 7, pgs. 15-16)
- 2) ADL – Grooming – Nail care, 3 minutes, 1 time a day, 1 day a week and Grooming – other (lotion) – 3 minutes, 1 time a day, 7 days a week for a total of 24 minutes per week (Exhibit 7, pgs. 17-18)
- 3) ADL – Dressing – 6 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 77 minutes (Exhibit 7, pgs. 19-20)
- 4) ADL – Assistance with Medications Activities – Prefilling assist, 10 minutes, 1 time a day, 1 day a week – Physical assist with dispensing medications – 1 minute, 4 times a day, 7 days a week, Glucometer check, 3 minutes, 3 times a day, 7 days a week for a total of 101 minutes per week (Exhibit 7, pgs. 23-24)

MassHealth stated that the submitted clinical record did not support the Appellant's request. (Testimony) It should be noted that the Appellant's request for 847 minutes per week (14.25 hours) of PCA services was supported by the assessing nurse's submissions (Exhibit 7, pgs. 5-24, Exhibit 7, pgs. 64-65, Exhibit 7, pg. 72), the Occupational Therapy Functional Status Report (Exhibit 7, pgs. 51-52) as well as the Appellant's physician's submission (Exhibit 6, Exhibit 7, pgs. 60-63).

The Appellant was represented by her Appeal Representative, her daughter. (Testimony) The Appellant, through her Representative, testified that the Appellant also has been diagnosed with blindness. (Testimony) MassHealth responded that the diagnosis was not included in the submission. (Testimony). The diagnosis of blindness appears in the Optum packet, within the PCA assessment (Exhibit 7, pg. 9) as well as the Occupation Therapy Functional Status Report (required for initial evaluations) (Exhibit 7, pg. 51) After reference to the Record, MassHealth inquired as to the onset of the blindness, to which the Appellant's Representative testified that the onset occurred in 2019. (Testimony). When asked by MassHealth if the Appellant had consulted with the Massachusetts Commission for the Blind (MCB), the Appellant's Representative responded that they had not, and that they were unaware where to seek aid for the Appellant's blindness. (Testimony). MassHealth stated the diagnosis of blindness did not alter MassHealth's position regarding the denial.

The Appellant's Representative further testified that the Appellant no longer has Home Health Aide Services, Physical Therapy, and Occupation Therapy services. (Testimony) The Appellant's Representative testified that she (Appellant's Representative) was currently paying for someone to aid her mother, while the Appellant's Representative continued to care for her own children. (Testimony) The Appellant's Representative stated that this was difficult, especially considering the Appellant's multiple doctors' appointments and the surgery the Appellant underwent in September of 2023. Despite the updating testimony regarding the cessation of services, MassHealth responded that MassHealth stood by the determination. (Testimony) No resolution was reached between the parties.

Findings of Fact

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

1. The Appellant is a MassHealth member under the age of 65 who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 7).
2. The Appellant's primary diagnoses include Chronic Heart Failure and Diabetes. (Testimony, Exhibit 7, pg. 9) The Appellant underwent Coronary Artery Bypass Surgery in September of 2023. (Testimony, Exhibit 7, pg. 9) The Appellant's Representative testified that the Appellant has also been diagnosed with blindness, the onset of which occurred in 2019. (Testimony, Exhibit 7, pg. 9 Exhibit 7, pg. 51)
3. MassHealth noted the physical assessment of the Appellant, specifically that the Appellant was observed to raise her arms, move her feet and don socks, albeit with great difficulty. (Testimony) MassHealth expounded that the Appellant displayed shortness of breath and fatigue, which is not unusual for a person who underwent the surgery that the Appellant had in September of 2023. (Testimony)
4. MassHealth continued testimony, noting the Appellant was observed to have closed her hands into fists and displayed fine motor skills coordination, displayed independence with sitting and transferring, again exhibiting difficulty with the task. (Testimony) MassHealth noted the report indicated the Appellant was able to accomplish bed transfers and lay supine and was able to ambulate with the aid of a rolling walker, with a slow and steady gait, once again displaying shortness of breath and complaining of fatigue. (Testimony)
5. MassHealth initially denied the diagnosis of blindness, but ultimately testified that the diagnosis did not change MassHealth determination to deny the Appellant PCA services. (Testimony)

6. Regarding the Appellant's request for 847 minutes per week (14.25 hours) of PCA services as supported by the assessing nurse's submissions (Exhibit 7, pgs. 5-24, Exhibit 7, pgs. 64-65, Exhibit 7, pg. 72), the Occupational Therapy Functional Status Report (Exhibit 7, pgs. 51-52) as well as the Appellant's physician's submission (Exhibit 6, Exhibit 7, pgs.60-63), MassHealth stated that the submitted clinical record did not support the Appellant's request. (Testimony)

7. The Appellant, through her Representative, testified that the Appellant also has been diagnosed with blindness. (Testimony)

8. The Appellant's Representative further testified that the Appellant no longer has Home Health Aide Services, Physical Therapy, and Occupation Therapy services. (Testimony)

Analysis and Conclusions of Law

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

(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.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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 PCA 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 PCM 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 PCA 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.

Additionally, the Regulation cited by MassHealth at the Hearing is codified in 130 CMR 422.403(C):

422.403: Eligible Members

(C) MassHealth covers PCA 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 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. (***Emphasis added***)

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also 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 Commn., 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).

Here, the Appellant has met her burden, by a preponderance of evidence, that MassHealth's administrative determination is invalid. The Appellant submitted the required documentation for evaluation. (Exhibit 7). The Appellant underwent an assessment. (Exhibit 7). Based upon the assessment, the assessing nurse submitted the following related to ADLs:

- 1) ADL – Bathing – 25 minutes, 1 time a day, 7 days a week for a total of 175 minutes per week
- 2) ADL – Grooming – Nail care, 3 minutes, 1 time a day, 1 day a week and Grooming – other (lotion) – 3 minutes, 1 time a day, 7 days a week for a total of 24 minutes per week
- 3) ADL – Dressing – 6 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 77 minutes
- 4) ADL – Assistance with Medications Activities – Prefilling assist, 10 minutes, 1 time a day, 1 day a week – Physical assist with dispensing medications – 1 minute, 4 times a day, 7 days a week, Glucometer check, 3 minutes, 3 times a day, 7 days a week for a total of 101 minutes per week

This recommendation was based upon the in-person assessment performed by the assessing

nurse. (Exhibit 7, pgs. 5-24, Exhibit 7, pgs. 64-65, Exhibit 7, pg. 72). The Occupational Therapy Functional Status Report (Exhibit 7, pgs. 51-52) concurs with the assessing nurse's recommendation. The Appellant's physician's submission (Exhibit 7, pgs.60-63) concurs with the assessing nurse's recommendation. 130 CMR 422.403(C)(3) states "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)." Here, the PCM has determined that the Appellant requires physical assistance with 4 ADLS¹. (Exhibit 7)

Additionally, the recommendation for PCA hours was supported by the diagnoses by the Appellant's physician and the primary diagnosis is noted as "chronic heart failure" in the assessment. (Exhibit 7, pg. 9) The relevant medical history of the Appellant includes diabetes as well as blindness. (Exhibit 7, Testimony) These diagnoses support the Appellant's chronic conditions as required by the Regulations for PCA services. Specifically, 130 CMR 422.403(C)(2) requires that "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." The evidence presented supports the determination that the Appellant's disability is chronic and impairs the members functional ability to perform ADLs and IADLs. Additionally, these conditions are not alleviated by the Appellant's surgery. Moreover, the Appellant's Representative daughter confirmed that as of the Hearing date, the Appellant still exhibits the symptoms and difficulties described within the assessment. (Testimony) This Record is replete with instances of the Appellant's labored breathing and fatigue when attempting to perform the listed activities. (Exhibit 7, Testimony)

Based upon the Record in the instant appeal, including the testimony of the Appellant as well as the submissions, I find that the Appellant has met her burden, by a preponderance of evidence, that MassHealth's administrative determination is invalid². According, this appeal is APPROVED.

Order for MassHealth

APPROVE PCA services as requested by the Appellant:

¹ The PCM has also determined that the Appellant requires help with the following IADL's: Meal preparation – for a total of 280 minutes per week, Laundry – 60 minutes, one time a week, Housekeeping – 45 minutes, one time a week, Shopping – 45 minutes, one time a week, Special needs – Equipment maintenance, wheelchair, other – 10 minutes, one time a week and Medical Transportation – 30 minutes, one time a week.

² At the Hearing, Optum disputed the Appellant's need for assistance with ADLs. No testimony was offered contesting the actual times sought for the tasks in which assistance was requested.

- 1) ADL – Bathing – 25 minutes, 1 time a day, 7 days a week for a total of 175 minutes per week
- 2) ADL – Grooming – Nail care, 3 minutes, 1 time a day, 1 day a week and Grooming – other (lotion) – 3 minutes, 1 time a day, 7 days a week for a total of 24 minutes per week
- 3) ADL – Dressing – 6 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 77 minutes
- 4) ADL – Assistance with Medications Activities – Prefilling assist, 10 minutes, 1 time a day, 1 day a week – Physical assist with dispensing medications – 1 minute, 4 times a day, 7 days a week, Glucometer check, 3 minutes, 3 times a day, 7 days a week for a total of 101 minutes per week
- 5) IADL – Meal preparation – Breakfast, 10 minutes, 1 time a day, 7 days a week – Lunch, 10 minutes, 1 time a day, 7 days a week – Dinner, 20 minutes, 1 time a day, 7 days a week for a total of 280 minutes per week
- 6) IADL – Laundry – 60 minutes, one time a week
- 7) IADL – Housekeeping – 45 minutes, one time a week
- 8) IADL – Shopping – 45 minutes, one time a week
- 9) IADL – Special needs – Equipment maintenance, wheelchair, other – 10 minutes, one time a week
- 10) Medical Transportation – 30 minutes, one time a week

Total approved time, 847 minutes per week – 14.25 hours per week (as rounded up to nearest 15 minutes increment) as requested.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]