Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2400495
Decision Date:	03/12/2024	**Hearing Date:**	03/01/2024
Hearing Officer:	Christopher Jones	**Record Open to:**	03/08/2024

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Kelly Rayen, RN – Optum Representative

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 Authorization; PCA; DDS Forms
Decision Date:	03/12/2024	**Hearing Date:**	03/01/2024
MassHealth's Rep.:	Kelly Rayen, RN	**Appellant's Rep.:**	[redacted]
Hearing Location:	Telephonic	**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 request for personal care attendant services. (Exhibit 1; 130 CMR 450.303.) The appellant filed this appeal in a timely manner on January 10, 2023. (Exhibit 3; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

MassHealth requested additional time to legally support its basis for denying PCA services for a minor, and the record was left open until March 8 for legal arguments.

Action Taken by MassHealth

MassHealth denied the appellant's personal-care attendant services because "the documentation submitted does not meet the PA submission requirements." Specifically, no DDS Forms were submitted with her request.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303 and 422.416, in determining that the appellant did not submit a completed prior authorization request.

Summary of Evidence

The appellant is a minor with a primary diagnosis of autism with intellectual and behavioral disabilities. On or about November 8, 2023, the appellant's personal care management ("PCM") agency, [redacted], submitted a reevaluation prior authorization request for the period of December 30, 2023 through December 29, 2024. This request sought 26 hours and 15 minutes per week of day/evening personal care attendant ("PCA") services and 14 hours per week of nighttime services. The appellant continued to receive PCA services through December 29, 2023, under last year's prior authorization. (Exhibit 7, pp. 2, 6-7, 32.)

At the appeal hearing, MassHealth's representative explained that the appellant's PCM agency had not submitted any paperwork from the Department of Developmental Services ("DDS"). MassHealth's computer system shows that the appellant has been affiliated with DDS since May 2021, and MassHealth's representative understood that many DDS consumers receive additional services from that agency. Therefore, the agency deferred this prior authorization request and asked the PCM agency to submit forms from DDS to verify that the appellant is not receiving duplicative services from DDS. On December 5, 2023, MassHealth sent out the Deferral Notice, indicating that MassHealth had sent [redacted] a request on November 27, 2023, for "Missing Documentation: DDS Form … Please provide DDS schedule of services if applicable to prevent duplication of services." (p. 41). MassHealth's representative testified that no DDS documentation was received from [redacted] and the requested services were denied.

On December 18, 2023, MassHealth sent a notice denying this prior authorization request, stating:

> 136031 - 130 CMR 450.303 REQUESTS FOR PRIOR AUTHORIZATION MUST BE SUBMITTED IN ACCORDANCE WITH MASSHEALTH INSTRUCTIONS IN THE APPROPRIATE PROVIDER MANUAL, INCLUDING SUBCHAPTER 5. THE DOCUMENTATION SUBMITTED DOES NOT MEET THE PRIOR-AUTHORIZATION SUBMISSION REQUIREMENTS.
>
> 12/18/2023 MassHealth has denied your request for prior authorization due to the documentation submitted does not meet the PA submission requirements, reason code 136031 CID 8166

(Exhibit 1.)

The appellant's mother testified that her daughter is a minor who lives at home with her and her other disabled child. The appellant has been covered by PCA services for [redacted], and the appellant receives no services through DDS. She has repeatedly asked [redacted] why services were denied, and [redacted] responded that the agency did not understand why services were denied because there was nothing else they could send in. The appellant's mother testified that a social worker from DDS had come by her house to talk to her about services that might be available for the appellant. The social worker brought the appellant a tablet and some gift cards for groceries.

Otherwise, the appellant's mother understood that DDS was trying to prepare the appellant for services outside her home that would be available once the appellant became an adult. The appellant's mother wants her to remain living at home, so she is uninterested in any DDS residential services. She testified that the appellant has not even returned to school since the pandemic because the appellant became paranoid and very uncomfortable in social circumstances.

When asked to corroborate this requirement to provide DDS Forms, MassHealth's representative identified the "Standard Documentation to Include with a Prior Authorization Request for Personal Care Attendant (PCA) Services." This document is "a list of documentation that Personal Care Management (PCM) agencies must submit, as appropriate, when requesting prior authorization (PA) for PCA services."[1] The document is a spreadsheet of three columns: "Documentation to include with a PA request"; "Submit this documentation when"; and "Why you need to include the documentation."

The second row of the spreadsheet identifies:

> Department of Developmental Services (DDS) forms — copy of DDS Contract Summary Form and DDS PCA Referral Form, completed and signed by DDS and the PCM agency, where appropriate. If the consumer receives no DDS-funded residential supports, but is DDS-eligible and does not live with his/her parents, then submit a copy of the PCA Referral Form only.

This documentation should be submitted when:

> The PCA consumer is DDS-eligible, over the age of 21, and is receiving DDS-funded residential supports (less than 24/7) and is not living with his/her parents. Note: DDS consumers who receive DDS-funded residential supports on a 24/7 basis receive all personal care assistance through DDS. Therefore, personal care services would duplicate services provided through the residential supports contract and are not covered for such consumers.

This documentation is needed "to identify whether or not DDS-funded residential supports are provided to the consumer and to ensure that the requested PCA services are not duplicative of services provided by DDS."

It was pointed out that the appellant was under the age of 21 and lives at home; therefore, it is unclear why the appellant would be required to submit any DDS forms. MassHealth's representative responded that whether the forms were needed, MassHealth requested them and the PCM should have sent them in. It was the failure to respond to the request for additional documentation that justified the denial of services, according to the MassHealth representative.

[1] This document is available at https://www.mass.gov/files/2017-08/standard%20doc%20-%20pca.pdf. (Last visited March 1, 2024.)

MassHealth was asked if the agency would like an opportunity to submit additional legal support for its denial, and the agency's representative agreed to submit something in writing within a week. The appellant's mother was also offered the opportunity to submit a letter from the DDS caseworker with whom she met to verify that there are no DDS services in place. The appellant authorized a representative from DDS to submit documentation into the record, and a DDS employee submitted an email stating the appellant's DDS services "do not include PCA services."

MassHealth responded to state: "Regulation CMR 130 422.22 (C, 4) [*sic*] The MassHealth agency may defer or deny requests for prior authorization for PCA services where (c) the evaluation provides insufficient information to determine if PCA services are medically necessary." The agency's response went on to state that the email from DDS was sufficient documentation to verify "that there is no duplication of services. The re-evaluation prior authorization administrative denial will be rescinded. The re-evaluation will be reviewed and adjudicated per regulations. Ms. Rodriguez will have appeal rights to this decision per Fair Hearing Rules 130 CMR 610.032 (A,3)."

MassHealth was asked if this rescission would reinstate benefits under 130 CMR 422.416(C), as the agency is required to continue services for timely renewals until it issues a determination on the renewal request. MassHealth indicated that it would not, because the appellant had not been entitled to Aid Pending protection through the Board of Hearings.

The appellant requested that a decision be issued.

Findings of Fact

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

1) The appellant is a minor child with a primary diagnosis of autism with intellectual and behavioral disabilities. She lives at home with her mother. She was receiving PCA services under a prior authorization that was due to expire on December 29, 2023. (Exhibit 7, pp. 2, 5-6, 25; testimony by appellant's mother.)

2) On or about November 8, 2023, the appellant's PCM agency submitted a prior authorization request for the period of December 30, 2023 through December 29, 2024. This request sought 26 hours and 15 minutes per week of day/evening PCA services and 14 hours per week of nighttime services. (Exhibit 7, pp. 2, 32.)

3) On or about November 27, 2023, MassHealth deferred the prior authorization request and asked the PCM agency for "Missing Documentation: DDS Form . . . Please provide DDS schedule of services if applicable to prevent duplication of services." (Exhibit 7, p. 41.)

4) The PCM agency provided no additional documentation, and MassHealth issued its December 18 denial notice, citing 130 CMR 450.303, explaining that "REQUESTS FOR PRIOR AUTHORIZATION MUST BE SUBMITTED IN ACCORDANCE WITH MASSHEALTH

INSTRUCTIONS IN THE APPROPRIATE PROVIDER MANUAL, INCLUDING SUBCHAPTER 5. THE DOCUMENTATION SUBMITTED DOES NOT MEET THE PRIOR-AUTHORIZATION SUBMISSION REQUIREMENTS." (Exhibit 1.)

5) The prior authorization submission requirements referenced in this notice are the "Standard Documentation to Include with a Prior Authorization Request for Personal Care Attendant (PCA) Services." (Testimony by MassHealth's representative.)

6) The record was left open for MassHealth to provide additional legal support for its action. MassHealth reiterated its position that the agency may defer or deny prior authorization requests where the PCM's evaluation "provides insufficient information to determine if PCA services are medically necessary." MassHealth offered to rescind its notice because an email from DDS was deemed sufficient to establish no duplication of services, but refused to reinstate benefits as if no action has been taken on the appellant's prior authorization request. (Exhibit 8.)

7) MassHealth identified no substantive disagreement with the time requested by the appellant, and only objected to the lack of documentation submitted with the request. (Testimony by MassHealth's representative; Exhibit 8.)

Analysis and Conclusions of Law

MassHealth generally covers personal care attendant ("PCA") services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

MassHealth determines medical necessity by requiring prior authorization.

> Prior authorization determines only the medical necessity of the authorized service, and does not establish or waive any other prerequisites for payment, such as member eligibility or resort to health-insurance payment.
>
> …
>
> (B) The following rules apply for prior-authorization requests.
>
> (1) The date of any prior-authorization request is the date the request is received by the MassHealth agency, if the request conforms to all applicable submission requirements including, but not limited to, the form, the address to which the request is sent, **and required documentation**.

(2) If a provider submits a request that does not comply with all submission requirements, the MassHealth agency informs the provider

(a) of the relevant requirements, including any applicable program regulations;

(130 CMR 450.303 (emphasis added).)

The applicable program regulations include the following:

422.416: PCA Program: Prior Authorization for PCA Services

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care as described in 130 CMR 503.007: *Potential Sources of Health Care* and 130 CMR 517.008: *Potential Sources of Health Care*.[2] … All requests for prior authorization for PCA services must … be submitted on MassHealth forms in accordance with the billing instructions in the Personal Care Manual Subchapter 5, and 130 CMR 422.416. The MassHealth agency responds to requests for prior authorization in accordance with 130 CMR 450.303: *Prior Authorization*.

(A) Initial Request for Prior Authorization for PCA Services. …

(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.

[2] These regulations identify MassHealth as the benefits-payor of last resort and require members "take all necessary steps to obtain benefits to which he or she is legally entitled or for which he or she may be eligible … ." (See 130 CMR 503.007; 503.008.)

…

(C) Continuation of PCA Services. To ensure the continuation of PCA services, PCM agencies must request prior authorization from the MassHealth agency at least 21 calendar days before the expiration date of the current prior-authorization period. The PCM agency must include in its prior-authorization request the documentation described in 130 CMR 422.416(A). The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior-authorization request at least 21 calendar days prior to the expiration of the current prior-authorization period. If the MassHealth agency does not receive the new prior-authorization request at least 21 calendar days before the expiration date, the MassHealth agency may stop payment for PCA services after the expiration date.

422.422: PCA Program: Personal Care Management Agency Operating Procedures

…

(C) Evaluation to Initiate PCA Services.

…

(4) **The MassHealth agency may defer or deny requests for prior authorization for PCA services where**:

(a) the applicant does not meet the eligibility criteria defined in 130 CMR 422.403;

(b) the standard MassHealth personal care application and evaluation forms are not submitted or are incomplete;

(c) the evaluation provides insufficient information to determine if PCA services are medically necessary;

(d) the member or the surrogate or administrative proxy has not signed the evaluation;

(e) the surrogate or administrative proxy information is not provided in the format requested by the MassHealth agency, or the PCM agency has determined that a surrogate or administrative proxy is required, but one is not identified in the evaluation; or

(f) the services being requested in the evaluation are not covered under the MassHealth PCA program. (See 130 CMR 422.410 through 130 CMR 422.412.)

> (D) Reevaluation. Reevaluations must be conducted by a registered nurse or LPN under the supervision of a registered nurse, and must include a review of the service agreement and the assessment by qualified PCM agency staff. If appropriate, an occupational therapist may be involved in the process. Requirements cited in 130 CMR 422.422(C)(2) through (4) also apply to reevaluations.

(130 CMR 422.416; 422.422(C)(4)(c) (emphasis added).

MassHealth argues the PCM did not provide required documentation as "IN ACCORDANCE WITH MASSHEALTH INSTRUCTIONS IN THE APPROPRIATE PROVIDER MANUAL," as documented in the "Standard Documentation to Include with a Prior Authorization Request for Personal Care Attendant (PCA) Services." This would appear to be a violation of 130 CMR 450.303, which requires prior authorization requests be submitted with "required documentation." Following the record open period, MassHealth further identified that it could not determine if the services were "medically necessary" without these forms, which justified the deferral and denial of services under 130 CMR 422.422(C)(4).

The difficulty with the agency's contention is that it only requires DDS forms "where appropriate," which is when "[t]he PCA consumer is DDS-eligible, **over the age of 21**, and is **receiving DDS-funded residential supports** (less than 24/7) **and is not living with his/her parents**." ("Standard Documentation to Include with a Prior Authorization Request for Personal Care Attendant (PCA) Services" (emphasis added)). The appellant is both under 21 years of age and lives with her parent. This list of criteria requires all of these conditions to be true in order to require DDS Forms; it is not sufficient that a PCA consumer be "DDS-eligible," or even "over the age of 21," if they are still living with their parents. Because these forms were not necessary, according to MassHealth's own processes and documentation, MassHealth was always able to determine that PCA services were "medically necessary" in the absence of these forms. Therefore, MassHealth erred in requesting these forms and erred in denying benefits in their absence.

Further, MassHealth has not truly offered to rescind its denial notice. MassHealth offered to rescind its denial notice but refused to reinstate benefits.

> The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior-authorization request at least 21 calendar days prior to the expiration of the current prior-authorization period. **If the MassHealth agency does not receive the new prior-authorization request at least 21 calendar days before the expiration date, the MassHealth agency may stop payment for PCA services after the expiration date.**

(130 CMR 422.416(C) (emphasis added).)

The appellant's reevaluation prior authorization was submitted on November 8, more than 21 days before the expiration of her last prior authorization period. If MassHealth were to rescind its denial notice, i.e. act as though no notice had been issued, it would need to reinstate the appellant's existing prior authorization until it had issued a notice.[3] Because the agency has refused to do so, they have not truly offered to rescind of their December 18 denial notice.

There is no dispute in the record regarding the substance of the appellant's prior authorization request for 26 hours and 15 minutes per week of day/evening personal care attendant ("PCA") services, and 14 hours per week of nighttime services. Therefore, in the absence of the agency's willingness to fully rescind their denial, this appeal must be APPROVED.

Order for MassHealth

Approve the appellant's November 8 prior authorization request for 26 hours and 15 minutes of day/evening services and 14 hours of nighttime services per week, for a total of 40 hours and 15 minutes per week for the prior authorization period of December 30, 2023 through December 29, 2024.

[3] MassHealth's representative confuses the continuation of services the agency is required to provide pending its review of a prior authorization request with the protection the Board of Hearings affords an appellant who appeals before a change in benefits occurs or within 10 days of an appealable action. (See 130 CMR 610.036.)

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth's Office of Long-term Service and Supports. 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.

Christopher Jones
Hearing Officer
Board of Hearings

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