

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2400810
Decision Date:	4/2/2024	Hearing Date:	02/06/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, R.N.

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:	Dismissed in part; Denied in part	Issue:	Prior Approval, PCA Services
Decision Date:	4/2/2024	Hearing Date:	02/06/2024
MassHealth's Rep.:	Robin Brown	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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 14, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on December 23, 2023. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (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 is a female MassHealth member in her mid 50's who

also appeared via phone. Both were sworn. Appellant has a primary diagnosis of [REDACTED] (Ex. 4, p. 10; Testimony). The appellant's personal care management (PCM) agency, The Arc of the South Shore, submitted a prior authorization request for PCA services requesting 41 hours and 15 minutes per week. MassHealth modified the request to 14 hours and 30 minutes per week. (Ex. 4, pp. 2, 13-39; Testimony).

There were multiple modifications based upon MassHealth regulations. MassHealth modified Mobility, physical assist, from 5 minutes an episode, 2 episodes a day, 7 days a week to 2 minutes an episode, 2 episodes a day, 7 days a week. MassHealth modified Mobility, stairs, from 5 minutes an episode, 4 episodes a day, 7 days a week to 2 minutes an episode, 2 episodes a day, 7 days a week. MassHealth modified PROM from 5 minutes an episode, 2 times a day, 7 days a week to 0. MassHealth modified Bathing, physical assist, from 5 minutes an episode, 2 times a day, 7 days a week and secondarily 25 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified these times by combining them to a total of 20 minutes an episode, 1 episode a day, 7 days a week, to be used as appellants sees fit. MassHealth modified Bathing, hair washing, from 15 minutes an episode, 1 episode a day, 3 days a week to 0. MassHealth modified Meal Preparation from 60 minutes a day, 7 days a week for 3 meals to 30 minutes a day 7 days a week for 3 meals. MassHealth modified Laundry from 60 minutes a week to 30 minutes a week. Housekeeping was modified by MassHealth from 60 minutes a week to 30 minutes a week. Shopping was modified from 60 minutes a week to 30 minutes a week. MassHealth modified Medical Transportation from 99 minutes a week to 0. MassHealth modified the time requested for Toileting, bladder care, night, from 5 minutes an episode, 2 episodes a night, 7 days a week to 0.

After explanation from the MassHealth representative, and discussion between the parties, appellant agreed to the MassHealth modifications to Mobility - stairs, PROM, Bathing - physical assist, Bathing - hair washing, Laundry, Housekeeping and Medical Transportation. After testimony from appellant and discussion between the parties, MassHealth agreed to restore the requested time for Mobility - physical assist, Meal Preparation and Shopping. Therefore, these parts of the appeal are dismissed.

Findings of Fact

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

1. Appellant is a female MassHealth member in her mid-50's with a primary diagnosis of [REDACTED] (Ex. 4, p. 10; Testimony).
2. MassHealth received a prior authorization request for PCA services requesting 41 hours and 15 minutes per week. (Ex. 4, p. 2; Testimony).

3. MassHealth modified the request to 14 hours and 30 minutes per week. (Ex. 4, pp. 2, 13-39; Testimony).
4. The appellant filed this appeal in a timely manner on December 23, 2023. (Ex. 2).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with Mobility, physical assist and stairs, PROM, Bathing, physical assist and hair washing, Meal Preparation, Laundry, Housekeeping, Shopping and Medical Transportation. (Testimony).
6. Appellant requested PCA time assistance with Toileting, bladder, nighttime, as follows: 5 minutes an episode, 2 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 22).
7. MassHealth modified the time requested for Toileting, bladder, nighttime to 0. (Testimony).
8. Appellant is capable of driving. (Ex. 4, p. 8).

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) 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.

Pursuant to 130 CMR 422.410(B), 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 personal care services; and
 - (c) other special needs approved by the Division as being instrumental to the health care of the member.

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**).

The appeal is dismissed as to the following ADL's and IADL's. At hearing, the parties were able to resolve the disputes concerning Mobility, physical assistance and stairs. MassHealth agreed to restore the time requested for physical assistance to 5 minutes an episode, 2 episodes a day, 7 days a week. For Mobility, stairs, appellant agreed to the modification by MassHealth at 2 minutes an episode, 2 episodes a day, 7 days a week. The parties were able to resolve the dispute related to PCA assistance with PROM. After testimony and discussion, the appellant agreed with the modification set by MassHealth for 0 time for this task. Regarding Bathing, physical assist, appellant agreed to the MassHealth modification of 20 minutes an episode, 1 episode a day, 7 days a week. For Bathing, hair wash, the parties agreed to 10 minutes an episode, 1 episode a day, 3 days a week. For Meal Preparation, MassHealth agreed to the time requested by appellant at 60 minutes a day, 7 days a week for 3 meals. Regarding Laundry, appellant agreed to the MassHealth modification of 30 minutes a week. For Housekeeping, appellant agreed to the MassHealth modification of 30 minutes a week. For Shopping, MassHealth agreed to the time requested by appellant at 60 minutes a week. Regarding Medical Transportation, appellant agreed to the MassHealth modification of 0 time for this task.

Toileting, Bladder care, night:

Appellant requested 5 minutes an episode, 2 episodes a night, 7 days a week. (Ex. 4, p. 22; Testimony). MassHealth modified this request to 0. MassHealth stated this was denied because appellant has a commode. (Testimony; Ex. 4, p. 38). Also, there was no request for assistance for appellant to get in and out of bed or in and out of a chair. Since appellant does not need assistance with these two tasks, she should be able to use a commode at night. Appellant testified she does not have a commode.

Appellant's prior authorization request was deferred for missing information. (Ex. 4, p. 37). One issue MassHealth wanted confirmed was if appellant had a bedside commode. (Id.). The nurse who did the in-person evaluation of appellant (Ex. 4, p. 50) notified MassHealth that "appellant uses a bedside commode during the night." (Ex. 4, p. 38). Appellant has not shown there is a medical necessity for her to have assistance with this task. Under Toileting, the reviewer did not request any time under Special Transfer during the day to assist appellant out of a chair onto the toilet. (Ex. 4, p. 22). Appellant's level of assistance with mobility, getting in and out of bed and getting on and off the toilet is minimal. (Ex. 4, p. 7). The record also reflects appellant is capable of driving. (Ex. 4, p. 8). The act of getting in and out of a car is certainly on par with getting in and out of a chair, if not more difficult because of the need to step up/over and turn to get into the car and the need to turn and lift yourself from the car seat when exiting the car. Additionally, a service is "medically necessary" if 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. 130 CMR 450.204 (A)(2). The MassHealth representative testified appellant could obtain a bedside commode if she does not

have one and it would be covered fully by MassHealth. (Testimony).

I find the record shows appellant does not need PCA assistance for Toileting, bladder care, at night and there is another medical service comparable in effect, available and suitable for appellant that is less costly. Therefore, appellant has not met her burden and the request for time for this task is denied.

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.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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